Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1996

BETTYE L. COUGHLIN,
Petitioner,

v.

BMC, et al.,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Bettye L. Coughlin, *Pro se,*
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QUESTIONS PRESENTED

1. The decisions of the Court of Appeal are in direct conflict with all law and rule.

2. The district judges and Atlanta are out of control and willing to go to any length to cover their involvement in the ***"Experiment"***
.

3. The district court and Atlanta denied me meaningful discovery.

4. ERISA is not a shield to commit murder.

5. Agents of the Health Dept. are not imune from suit for knowingly doing wrongful acts.

6. UAB is the same as the Health Dept.. If UAB refuses to give up those individual agents that did the wrong then UAB as "Respondent Superior" takes the blame.

STATEMENT PURSUANT TO RULES 14.1(b) and 29.1

All parties are named in the caption.

Baptist Medical Center Princeton, and it agents R. Thweat and M.C. Buchanan,
RAYFORD THWEAT,
MICHAEL C. BUCHANAN,
Jefferson County Health Dept.,
Blue Cross Blue Shield of Alabama,
Blue Shield of Pennsyvania,
Universirty of Alabama in Birmingham, and its agents Luis O. Vasconez and others, Brookwood Medical Center, and its agents Gorden Rorinson, Jr., et al.
James C. Upchurch, Dr. Jorge A. Lazarte, Dr. Dan Merck, Dr. Merck deceased, Barbara H. Merck, and the estate of Dan Merck.
Alabama Psycratic Services, Medical Center, and its agents, Dr. W.B. Nickell. Carraway Medical Center and its agents, Dr. R.E. Howe and others.
Dr. A.W. Keith and others.

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INTRODUCTORY PRAYER

Appellant Bettye L. Coughlin pray this Court to grant her petition for certiorari to review an adverse decission by the United States Court of Appeals for the Eleventh Circuit.

CITATION TO OPINIONS BELOW

The decissions of the United States Court of Appeals for the Eleventh Circuit is reported at (*see* Appendix 9a and 21a).

The decission of the United States District Court, Northern Division of Alabama, is reported (see Appendix 1a-8a).

JURISDICTION

This Court has jurisdiction under 28 U.S.C. §1254 because appellant seek review of an adverse decission rendered by the United States Court of Appeals for the Eleventh Circuit.

STATUTORY PROVISIONS INVOLVED

The statutes underlying this case are:

I. 28 U.S.C. §1441 *Actions removable generally.*

***

(c) Whenever a seperate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discreation, may remand all matters not otherwise within its original jurisdiction.

II. 28 U.S.C. §1442 *Federal officers sued or prosecuted.* (a)

***

(1) Any officer of the United States or any agency thereof, or person acting under him, for any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

III. 28 U.S.C. §1443. *Civil rights cases.* (a)Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

IV. 28 U.S.C. §1446. *Proceedure for removal.*

***

(b) The prtition for removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the

initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has been filed in court and is not required to be served on the defendant, whichever period is shorter.

***

(c) Promply after filing of such petition and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no futher unless and untill the case is remanded.

V. 28 U.S.C. §1447. *Proceedure after removal generally.* (a)In any case removed from a State court, the district court may issue all nessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the petitioner to file with its clerk copies of all records and proceedings in such State court or may cause the same to be bought before it by writ of certiorira issued to such State court.

(c) If at any time before final judgement it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case, and may order the payment of just costs. ....

VI. 28 U.S.C. §1448. *Process after removal.* In all cases removed from State court to any district court of the United States in which any one or more of the defendants has not been served with process or in which the service has not been prefected prior to removal, or in which process served proves to be defective, such process or servi e may be completed or new process issued in the same manner as in cases originally filed in such district court. ...

VII. 28 U.S.C. §1449. *State court record suppllied.* Where a party is entitled to copies of the records and proceedings in

any suit or prosecution in a State court, to be used in any district court of the United States, and the clerk of such State court, upon demand, and the payment or tender of the legal fees, fails to deliver certified copies, the district court may, on affidavit reciting such facts, direct such record to be supplied by affidavit or otherwise. Thereupon such proceedings, trial, and judgement may be had in such district court, and all such process awarded, as if certified copies had been filed in the district court.

VIII. 28 U.S.C. §1652. *State laws as rules of decission.* The laws of the several states, except where the Constitution or treaties of the United States or Scts of Congress otherwise require or provide, shall be reguarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

IX. 28U.S.C. §1732. *Record made in regular course of business; photographic copies.*

***

(b) If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence, or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless its preservation is required by law, Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judical or administrative proceeding whether the original is in existance or not and an enlargement or facsimile of such reproduction is lickwise admissible in evidence if the

original reproduction is in existence and available for inspection under direction of court. ...

X. Federal Rules of Civil Procedure; V. Depositions and Discovery, Rule 26. General Provisions Governing Discovery.

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(b) *Scope of Discovery.* Unless otherwise liminted by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) *In General,* Parties may obtain discovery reguarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defence of the party seekig discovery or to the claim or defense of any other party, including the existance, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to discovery of admissable evidence.

***

XI. 29 U.S.C. §1001, et seq., *ERISA*

STATEMENT OF THE CASE

In 1971 Petitioner was a normal healthy female with sist and normal blood (*see* 28a). I was coersced into having surgery; (1) by being threatenend that I had cancer, (2) using my husban to threaten me, and (3) promising that it would be recostructive surgery and Blue Cross would pay. Infact, (*see* 29a) Dr. Upchurch brought in the Plastic Surgeon, Robinson. I never wanted the boobs and still don't. I became extremely sick, hair fell out, nails loosened, sick to my stomach, ect., while I was in the hospital. Upon my release I was told I would only go back to see Merck if I had cancer, so I was exteremely upset when Robinson notified me

I would have to go back to Merck (*see* 23a). Merck and his nurse (wife) were waiting and they (1) told me I had syphilis, (2) tried to give me penicillin, whicvh I am extremely allergic to, and (3) threatened to turn me in to the Health Dept. and tell my husband. As the Court will note he did (*see* 30a & 36a), I never had syphilis and that is noted on the CARD in collum 4, *Disposition* 0 *not inititaed.* This was not an accident as noted on the CARD they turned me in again in 71,73,73, and 77. As this Court will note UAB (University of Alabama Hospital) admitts that they knew in 73 and 77, I had tested **NEGATIVE** (*see* 38a) not postive as they claimed. Infact, every time I go to a doctor in this area I am (1) told to go back to Keith and (2) I have incurable syphilis, this is every time I get sick.. Though I never had syphilis I was periodically turned in for syphilis, Dr. Roper, former Jefferson County Health Officer and Head of Center for Disease Control in Atlanta, made the following statement to me and my son, " I will do that which is nessary to protect these doctors. You will never be able to *prove* that your silicone implants are causing your illiness. If you sue I will come in and testify that you were periotically turned in for syphilis." If we then asked him if I had ever had syphilis he would refuse to testify on the grounds that that is confidential, and he has "sovern imunity". Untill recently I could not prove that infact they had turned me in for syphilis it was all rumor and innuendo, and nobody was able to actually prove that silicone was bad for you. Futher, Federal District Judge Pointer, District Judge Clemons and acting U.S. Attorney C. Privett had direct knowledge of and did participate in this "coverup".

This has went on for years. In May 15, 1992 (*see* 40a) we were in Culman Circuit Court, defending a "class action" involving three million dollars Americas First Credit Union had stolen from us the membership and the Circuit Judge (Riley) went out of control and ordered this baliff to assult us. He wilfully and maliciously assulted me and ruptured my implants. I became sick and had to be hospitalised and though the Supreme Court of Alabama agreeded that "no hearing was had", Federal District reached out and revealed that the whole case had *secretly* been in

federal bankruptcy the whole time, so the issue was moot, and Riley was never disiplined though I filed with the Judical Inquiry Commission. At this time we started to put together my medical records and try to get the implants removed. Dr. Robinson(*also* original surgeon) agreed that the implants were old and rotten and ruptured and had to come out. But when we heard from Blue Cross blue shield of Alabama they said that though they had **lost** all their records they were sure that we had gone out and solicited the boobs. We went to all the plastic surgeons in this area and were turned away. (1) Upchurch denied he had any medical records, (2) Keith denied he had all his records, (3) Mrs. Merck denies she has any medical records, (4) Robinson denies he has any medical records, and (5) Blue Cross Blue Shield of Alabama denies they have any records.

But BCBSA got together with the doctors and demanded I pay for a mamogram, and the ***operation***. If the implant is already dianosed as ruptured there is no need for a mammogram. If the implant is aready ruptured a mammogram (a press) will, intentionally rupture it futher, infact the only reason Nickell demanded it was to rupture, he refused to do an oblique Xray series (*see* 41a). The ***operation*** that BCBSA and these doctors demanded I sign a release for and pay for is termed "criminal" by the FDA.. They were going to slit both implants take out a little goop and stuff in a saline implant. 40a and 41a is a *Night Line* interview with Dr. Kessler, who say (1) implaints fall apart, (2)ruptured implaints are painful, and (3) they have to come out. 41a-42a are AS-IS's newsletter, an "expert" on implants, as this Court will note they say that (1) it **all** must come out, and (2)saline implants maybe as bad as the gel. I demanded that the implants be removed in the hospital, and all the silicone be removed.

At about this time we discovered that the doctors and BCBSA were communicating together. As this Court can see by 29a and 39a, two of many pages of medical records Bailey gave me to "prove I sought out the boobs". As you will note they both have fax numbers, and qualify as records 28 U.S.C. §1732. Blue Cross and Blue Shield of Alabama's Bailey admitts that both Nickell and Robinson (evidenced by Fax heading, required by law) show that

Robinson had comunicated information to Nickell, aginst my instructions and he had comunicated this information to BCBSA. Futher, you will note that Robinson lied when he said he had no medical records, the same is true of the other parties to this suit, (*see* 40a) records we discovered inspite of the district judge. Carraway denied that they were our primary care giver, and as you will note though he (*see* 48a) didn't report me for syphilis he wrote, "*Hx of ? AIDS => generalised skin fungual infection, ".*

At this time we went to the Health Dept. and were given the V.D. Reactor Control Card (*see* 30a). They told us (1) it would do un no good, (2) they had computerised their records, and (3) they were still currently accepting reports on me for ?. Samuelson will not give me a copy of those reports, and admitts that they knew the whole time that all I ever had was silicone. She refused to, (1) remove the records, (2) refused to not take anymore false reports, and (3) refused to have the hospitals and doctors prosecuted for making false reports. Dr. Samuelson (*see* 37a and 38a) says that she is protecting the doctors, this is aginst even the Alabama Department of Public Health Administrative Code, Chapter 420.

You will understand at at this time I have **ALL** the hospitals, doctors, the Health Dept., and Blue Cross Blue Shield of Alabama involved in a conspiracy, fabricationg records and concealing others and just plain lying through their teeth.

I then appealed the decission of Blue Cross Blue Shield of Alabama to Pitts.. (*see*16a & 38a) as you will note I won the appeal Pitts. (Blue Shield of Pennsyvania) ruled the removal of the implants are a covered expense and the removal was a medical necessity. B. Bailey of Blue Cross Blue Shield of Alabama said, HELL would freeze over before she would allow me to be admitted to any hospital, and she controled the hospitals in this state. This was on about January 13, 1993. I took the letter to **all** the hospitals in this area and they refused me admission.

On June 10, 1994 Alabama Psyhciatric Services, an agent of Baptist Medical Center sued me (*see* 43a). Untill this time I was tring to negotiate in goodfaith with all these parties. The suit was malicious; (1) Thweat had agreed to accept an assignment from Blue Cross Blue Shield, (2) Thweat had reaccreted the syphilis

charge again and treated me with medications he knew I had adverse reactions to, and (3) Thweat had walked out when me and my son confrounted him with the aforementioned. On August 11, 1994, I sued in Circuit Court (*see* 22a, Appendix F) and on September 30, 1994 Thweat's suit was dismissed upon his own motion, but having no effect upon my suit (*see* 43a, Appendix U).

On August 11, 1994 I served Blue Cross Blue Shield. They sat on their butts untill September 21, 1994, when state Circuit Judge Jackson told them he wasn't just about to dismiss these charges, outofhand. On the 21st , 42 days after service of the summons and complaint (*see* 55a, Appendix S&T) Blue Cross Blue Shield filed for removal two week too late (*see* 28U.S.C. §1446 (b). Understand that this is SOP for the federal court in Alabama, and it was no accident (*see* 10a-21a, Appendix D) see Motion Establishing Appealable Error. Judge Pointer has summed it up on several occasions, "nobody has proved anything to him". Your lower court has gone to great lengths to coverup for these doctors, and I remind this Court that Judge Pointer and Cleamons have personal knowledge dating back almost to the time of the operation. Futher, the Tuskegee Experiment was ended in 1971, it was controled from and out of the Jefferson County Health Department, located here in Birmingham. The point of the ***experiment*** (Dr. Foster 1995) was to denie syphilis victums of any treatment. No matter what doctor in Alabama they went to see, they were refused treatment and sent back to Dr. Foster who intentionally didn't cure the treatment. It was only brocken up because, one of the victums went over to Tennessee and was cured. Alabama then tried to have the Tennessee doctors license revoked and the federal government got embarassed and brock it up. Pointer was involved in that and was responsible for seeing that a repeat never occured. Instead he and the other judges anexed the **machine** and have used it ever since as a hammer, to destroy anyone that opposses them.

On September 23, 1994 (*see* Appendix G, 37a) a hearing was had before state Circuit Judge Jackson (*see* Appendix R, 42a), he agreed with us that the agents of the state can be sued for wrongdoing and ordered us to amend the suit to name the

respondent superiors of the state. We did this on September 23, 1994. Futher, (*see* Appendix H, 41a) we served these parties by *Certified Mail Return Receipt Requested.* Some time after this the entire case file disapeared out of the state circuit clerks office. Neither the circuit judge or us knows who stole it, but the entire file including the **many** amendments and unserved (the clerk refused to serve) summons next appeared in District Judge Hancock's office. As far as me and the circuit judge know, no stay was ever given, no notice of removal ever served on the circuit clerk, and no request for copies ever made. Someone just stole the entire case file and took it over to Hancock. I objected, but as the record shows I was denied even a hearing.

As the record shows the district judge was absolutely biased from day one. He knew it was done 42 day after service of the Complaint (*see* 42a and 28UCS § 1446(b)). He did not require a bond (*see* 28USC §1446(c)) and denied us the right of a jury trial on the issues. Futher, he ignored the evidence I did submitt and denied us a discovery of evidence he knew the defendants were hiding (*see* 40a). Records from Carraway that show (1) they were our primary care giver, and (2) they had continued to report me to the Health Dept., notice the note from 1982, "*Hx of ? AIDS => generalised skin fungual infection*".

As we told Congress, the implant settelement case was only sent to Alabama because Pointer had been riding heard on "the experment" for years, the Tuskegee Experment never stopped.

REASONS FOR GRANTING THE PETITION

I. The decisions of the Court of Appeal are in direct conflict with all law and rule.

My implants were dianoised as "offically" ruptured in 1992 by two independent doctors (*see* 39a). At that time Blue Cross Blue Shield of Alabama entered into a cospiracy to denie me any medical treatment and infact tried to cause my death by encourageing the doctors to administer inappropriate treatment.

Bailey (of BCBSA) went so far as to denie she had any medical yet help the doctors fabricate evidence. As the records show I never sought the boobs and never paid. Blue Cross Blue Shield

was billed, but years (? statue of limitation) later Blue Cross of Alabama tries to say this was a "preexisting condition".

I appealed their decission to Pittsburg (Blue Shield of Pennsyvania and Carnige) and on January 13, 1993 they made their decission. As you will see, Appendix J (*see* 38a) I won the appeal[1], but Bailey acting for Blue Cross Blue Shield of Alabama and with the consent of Judge Pointer allowed Bailey to enter into a conspiracy with the hospitals in this area that I had access to. She infact said, "HELL would freeze over before I'll allow you to be hospitalised and those implants removed".

Bailey had no intention of obeying the law, and at that time Blue Cross Blue Shield ***waived*** any rights she had under ERISA. She acted maliciously to denie me medical treatment, she did not appeal it and said that, "the judge (Pointer) had already said he would protect them".

> My contract has the following line in it; *If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or federal court.*

In other words I can choose the forum when Blue Cross chooses to ignore the law, as they did in this case. The time of their notice was January 13, 1993, not the time we filed suit August 11, 1994. As the record shows they did not file untill Sept, 23rd two weeks after their time had lasped.

As the record shows this is SOP for Blue Cross, as set out in Appendix D (*see* 10a-21a). Though Mills has always been late and has lied on his **certificate of service** your lower court has ignored all these contemptuious behaviors and praised and rewarded Mills. Your lower court ignored both 28 USC §1446(b) time; 30 days, §1446(d) bond required in civil cases, and §1446(e) failed to notify the circuit clerk. In otherwords Mills refused to follow ANY law or rule, SOP for Alabama and the 11th Circuit.

2. The district judges and Atlanta are out of control and willing to go to any length to cover their involvement in the "*Experiment*".

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1 "... Based on our Advisor Review of the information provided, the removal of the breast implant would be a covered expense. ..."

When I filed in state court Polly Conradi (Circuit Clerk) intentionally opposed me and refused to serve some of these parties, and we amended and added parties to remove any defects, knowing this me and my son personally served BMC, Blue Cross and Blue Shield, and Dr. Bucanan, on the day we filed the suit, 8/11/94. We also served them by Certified Mail Return Reciept Requested. On everyturn we have tried to comply.

On the other District Judge Hancock literally stole the entire file from state circuit court including the summon's that Polly refused to serve, and he thenberates me for 8 pages (*see* 1a-8a) because I didn't prefect service. This is another example of the actual bias and intentional discrimination by this courthouse and Atlanta. 28USC §1447(a) says that the judge shall **compleat** the nessary service of parties. Alabama did away with *demurs* years ago. Though I didn't say John Doe, I did put in agents and other parties. I also added Keith in a later amendment that Hancock has and he has the whole summon that I paid $10 to have served on Bucanan. Not only is Hancock a liar, a cheat, and theft, he is also a hypocrite. He makes a major issue out of a problem he caused, and had a duty to retify.

3. The district court and Atlanta denied me a meaningful discovery.

Discovery is a matter of right, the complaint itself is the vessel to get to court, discovery is the tool to arrive at the facts. Not only did Hancock denie me a full discovery, he allowed the parties to with hold evidence that they used to discriminate aginst me with. (1) Though Blue Cross, Robinson, and Nickell denies they have any records as 29a &39a show they have sure had fun with their fax machines, we got these and others from Bailey of Blue Cross.

Futher, when Carraway lied on appeal we "discovered new evidence" that shows (1) Carraway was our primary care giver and (2) evidence that they had been continueing to report me to the Health Dept.. As the Court will note, *"Hx of ? AIDS => generalised Fungual infection"*. As this Court is well aware I have never had syphilis (*see* 30a &36a) and that is also true of AIDS.

As I stated, the V.D. Reactor Card (36a) was retired, they (the Health Dept.) computerised their their records and they (Samuelson) refuses to either give us a copy or remove the reports. She admitts that they have continued to take these known wrongful and false reports. She says she is "protecting" the doctors.

I have stated before that none of my complaints are based just on what was done in the past the discrimination has continued, and none of thes parties (except Carraway, who lied) have denied it. Instead they have all relied on some form of imunity or confidenuality.

4. ERISA is not a shield to commit murder.

Blue Cross attempts to accert ERISA as a defense aginst and intentional tort. As in all defenses you have to do what they say. In this case Blue Cross attempted to fabricate evidence and when they lost their appeal to Pittsburg (*see* Addendix J, 38a) they chose to ignor it and entered into a conspiracy to denie me medical care which Pittsburge, said was both a covered medical expense and **medically nessary** (*see* 16a & 39a). Once again Blue Cross showed utter contempt of the law.

When Blue Cross chose to ignor the law ,they ***waived*** ERISA when they intentionally chose to ignore Pittsburge's ruling. At that time my contract prevailed, and it stated; ...if they chose to ignor in part or whole, I have the choice of forums (state or federal). They were aware of this and chose to ignore it. They only became upset and acted when the state circuit judge ruled aginst them (*see* Appendix R, 42a)

Futher, case law *Farlow v. Union Cent. Life Ins. Co., 874 F.2d 791,* states;

> Despite the Howard court's decision, two years later we held the ERISA did not preempt an employee's claim of intentional distress. *Clark v. Coats & Clark, Inc., 865 F.2d 1237* (11th Cir.1989). In *Clark*, the employment, but not to the denial of benefits as in *Howard. Clark*, 865 F.2d at 1243 (Clark claimed that "his employment termination was carried out in a manner which was intended to inflict severe

emotional distress upon him."). Thus, the *Clark* court found no preemption because "the only connection between Clark's tort claim and ERISA is that the conduct arose in a factual setting which overlapped that of Clark's ERISA claim." *Clark*, 865 F.2d 1254.

I won the appeal Blue Cross intered into a cospiracy to denie me any medical treatment. As evidenced by the faxes (29a & 39a) Bailey rntered into a conspiracy to denie and/or cause intentional harm to myself. (1) the ***Opperation*** she tried to force me to under go and sign a release for, was termed "criminal" by the FDA and violates the standards of **AS-IS** (Appendix Q, 41a-43a). (2) A mamagram (press) would have intentionally futher ruptured an already ruptured implant. And (3) Blue Cross was the party that was and is spreading these vicious rumors and innuendo. This is why Howe wouldn't see us untill everyone else left and why Vasconez left us in the waiting room and left the hospital. They all have one common denominator, they called Blue Cross. And I also hold Bailey responsible that Thweat tried to harm me by treating me with medications that he knew I was (a) allergic to, and (b) would futher agrivate my condition (leaking silicone). Thweat did these acts after comunicating with Bailey and he left the hospital when confronted by the facts. As the Court can see by Appendix U (43a), though he had agreed to take an assignment he caused me to be sued (Bailey refused to pay) he dropped the suit when I countered.[2]

I don't think that intentionally getting together with the Health Dept. and hospitals here to intentionally denie me any medical care is within what ERISA was intended for. I remind this Court that I do not have to prove Alabama would do something like this to me, I have only to remind this Court of Tuskegee. They were denied treatment by every doctor in Alabama. What broke the ***Experiment*** was when one of the victums left Alabama and was cured. Alabama tried to have that Tennessee doctors license

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[2] This was not stright forward, (1) An enemy, former prosecutor Quinton Brown, stole the case from Alsbrooks, (2) lawyer tried to say the we defaulted, judge laughed, and (3) clerk wouldn't issue the dismissal, and the judge had to go to clerks office (Polly, again).

revoked. Alabama and Judge Pointer are just up to their old tricks.[3]

5. Agents of the Health Dept. are not imune from suit for knowningly doing wrongfull acts.

Alabama has always held that the state is imune but it's agents are not, for known wrongful acts. When we actually got the CARD in 92 we tried to get the Health Dept. to quit. They said no and that they would continue, to both accept and report me for syphilis, though they knew I didn't have it or AIDS.Dr. Samuelson said they had to protect the doctors. We have stated that this thing started off with Dr. Roper, who in 92 was head of the Center for Disease Control, in Alanta, but who in the 70's was head of the Jefferson County Health Dept. who was the controler of the Tuskegee Experiment[4].

Dr. Samuelson admitts that they computerised their records and she has more than the Card (30a), but she will not produce those records and your district judge is protecting them by refusing us a discovery. This is plainly aginst both 28USC §1732 and the Federal Rules of Civil Procedure; V. Depositions and Discovery, Rule 26 (b) and every other rule in this section.

Plaintiff in civil actions has only to produce a prepondeance of evidence. In this case the Health Dept. admitts that they have done the willful acts but relies on their imunity. Not even the President is absolutely imune from suit for a known wrongful act, especially when they state that they will continue that act. As Appendix I (*see* 38a), a page from records I got from the University of Alabama Hospital in Birmingham, they knew in 73 and 77 that I did not have syphilis and was infact "NEGATIVE", but they went ahead reporting me as "POSITIVE". You will note we are not talking about the socalled *"false positive"* they are talking about now. *DeStafney v. University of Alabama*, 413 So.2d 391, sums up

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3 *Coughlin v. Board of Equalization*, 442 So.2d 104, is 3 blank pages, West Publishing Co. doesn't have all the imunity to lie, cheat and steal that the judiary in Alabama do. West does not **intentionally** print outright lies, even though they do consider the 11th Cir. backward and stupid. We thought that was why you sent DOW to Alabama.

4 39A C.J.S., §§54 Health & Environment

imunity in Alabama, and it relies on *Elmore v. Fields*, 45 So. 66 as it's president.

> "It must stand to reason that no person can commit a wrong upon the property or person of another, and escape liability, upon the theory that he was acting for and in the name of the government which is immune from suit at the instance of one of her subjects"

Though I cannot "blanket sue" the state I can sue the institution and "discover" the individual agents. Dr. Samuelson admitted that it is **ongoing** and chose not to disclose the individual agents that did the wrongful acts. As **"Respondent Superior"** she can do that but she stands in their stead.

6. UAB is the same as Health Dept. . If UAB refuses to give up those individual agents that did the wrong then UAB as "Respondent Superior" takes the blame.

When Blue Cross chose to remove the case to federal court the District Judge was forced to reguard it as a "civil rights" case (*see* 28USC §1443. *Civil rights cases.*). But, your judge chose to disreguard this. He intentionally chose to "protect" the doctors and has denied any form of discovery and ignored the evidence I did produce.

28 USC §1442 applies to any federal officer sued or prosecuted. In this case Hancock has clearly joined the conspiracy to denie me any medical help and to actually try to harm and likely kill me. I was highly alergic to penicillin but they tried to give it to me.

One of the reasons we have federal courts is to enforce our Constitutional Rights. We can remove an issue to federal court when the state is biased. In this case your district judge was more biased (he doesn't have all the imunity, and isn't appointed for life) like Hancock. No state judge would have gone as far as Hancock did. He berated me about service when he had intentionally interferred with that service and knew I had already amended the suit on several occasions, **as the law and rule allow and is nessary**. It was the federal court that directed Tuskegee and it is the federal court in Alabama that has directed the "silicone

coverup". As Pointer always says. "no one has proved anything to him", and under these conditions they never will. I have never had syphilis or AIDS or "funsus" but every time I go in and say I'm sick I am told, "it (?) is incurable and I will have it (?) the rest of my life, but it's not silicone", they are positive it is not silicone. **IF IT IS NOT SILICONE, why report me to the Health Dept. every time I get sick.**

CONCLUSION

This is just another case of Alabama's and the 11th Circuits screwup. Typical as the "*Emperor's New Clothes*" no one will ever prove silicone is "bad for you", even if your judges have to shoot us. Recently, the government had to pay for the Oak Ridge Radiation Experiment. The doctor said that they had several successes and remissions of cancer. The reporter then asked her what happen to them, and she answered, "when it became apparent that they did get enough radiation to kill them, we sent them back in, untill they died, ofcourse.

Hitler tried to burn the books, Nixon tried to shread them, Alabama just prints blank pages. Since the clerks are educated in Alabama they can neither read nor write. Your clerks keep hollering I did not comply which is an outright lie. On the other hand they reward the scum like Mills who has either intentionally or through ignorance (educated in Alabama?) has **never** filed a case or answer on time.

I have proved beyond a "reasonable doubt" that the doctors knew we would become sick, and instituted a "Standard Operating Procedure " to handle the victums. Pointer and Atlanta just won't admit they are proven lairs, they intend to go right ahead violating all our Constitutional and Civil Rights. We have never needed the mafia we have had to live with your district judges.

Respectfully submitted,

Bettye L. Coughlin, *Pro Se*,
1616 Mann Dr.
B'ham, AL 35214
(205)798-5158

APPENDIX

APPENDIX A

Filed NOV -4 1994

IN THE UNITED STATES COURT FOR THE NORTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

BETTYE L. COUGHLIN, Plaintiff,	)	
vs.	)	CV-H-2310-S
BLUE CROSS AND BLUE SHIELD OF ALABAMA, ET AL., Defendants.	)	

MEMORANDUM OF DECISSION

On August 11, 1994, plaintiff filed what appears to be a very belated complaint in the Circuit Court of Jefferson County, Alabama. Two of the defendants named therein, Blue Cross and Blue Shield of Alabama and Pennsylvnia Blue Shield, removed the action to this court based upon the applicability of ERISA.[1] At the time of such removal, motions to dimiss had been filed in the Circuit Court of Jefferson County by Robert E. Howe, William B. Nickell, Alabama Psychiatric Services, Inc., Dr. Rayburn Thweat, Simon-Williamson Clinic, PC, Brookwood Medical Center, Gordon Robinson, UAB, Luis Vasconez and Baptist Medical Center-Princeton. Those motions to dismiss are presently before the court. Also before the court is the motion to dismiss filed by Jefferson County Board of Health, which was granted by the state court two days after the notice of removal was filed in this court. The state judge apparently had not recieved a copy of the notice of removal to this court. The court also has before it the motions to dismiss filed in this court by Blue Cross and Blue Shield of Alabama, Pennsylvania Blue Shield, and UAB. Finally, The Court has before it the motion for judgement on pleadings filed in this court by Carraway Methodist Medical Center and the motion for

[1] To the extent that plaintiff's "Objection to Removal" filed October 12, 1994 is viewed as a motion to remand, the court is satisfied that this action is properly before this court based upon the application of ERISA.

summary judgment filed in this court by Eastern Health System, Inc. d/b/a Medical Center East. The parties nambed above in this paragraph constitute all of the parties sued by plaintiff and made defendants in this lawsuit except Michael C. Buchanan (who has not been properly served), the estate of Dan Merck, and Barbara Merck (who were added by plaintiff's September 14, 1994 amendment and who have not been properly served). The complaint, in very express terms, indicates who is being sued. On the third and forth pages of the complaint, plaintiff expressly states [sic]:

> We are at this time suing;
>
> (1) Jefferson County Health Department
>
> (a) slander
>
> (b) libel
>
> (c)conspiring to denie Plaintiff medical treatment
>
> (2) Blue Cross Blue Shield of Alabama
>
> (a) Breach of contract
>
> (b) libel
>
> (c) conspiring to denie Plaintiff medical treatment
>
> (3) Blue Cross Blue Shield of Penn.
>
> (a) Breach of contract
>
> (b) libel
>
> (c) conspiring to denie Plaintiff medical treatment
>
> (4) UAB and it's agents Luis O. Vasconez and others.
>
> (a) libel
>
> (b) slander
>
> (c) conspiring to denie
>
> (5) Brookwood Medical Center and it's agents Gorden Robinson, Jr.
>
> (a) libel
>
> (b) slander
>
> (c)conspiring to denie
>
> (6) Medical Center East and it's agents William B. Nickell
>
> (a) Lible
>
> (b) Slander
>
> (c) conspiracy to denie treatment
>
> (7) Carraway Medical Center and it'sagents Robert E.

Howe
(a) libel
(b) slander
(c) conspiracy to denie
(8) Babtist Medical Center Princeton and it's agents Rayford Thweat and Michael C. Buchanan
(a) Libel
(b) slander
(c) conspiracy to denie treatment
(9) Simon-Williamson Clinic PC and it's agents
(same)
(10) Alabama Psychia tric Services and it's agents
(same)

While some additional persons have been served with process and/or are mentioned in some of the documents presented by plaintiff to the court, the court does not view those persons are defendants.[2]

The complaint charges all defendants separately with libel, slander and conspiracy to denie medical treatment. In addition thereto, blue Cross and Blue Shield of Alabama and Pennsylvania Blue Shield are charged with beeach of contract, and UAB and Dr. Luis O. Vasconez are apparently charged with false imprisonment. The allegations aginst all defendants focus on alledged misconduct charged as occuring as early as 1971 and 1973. Plaintiff also alleges a continuing conspiracy to denie medical treatment.

Defendants Brookwood Medical Center, Simon-Williamson Clinic, Alabama Psychiatric Services, Carraway Methodist Medical Center, Robert E. Howe, Dr. William B. Nickell, and

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[2] It appears that Dr. James C. Upchurch and A.W. Keith were actually served on August 23, 1994 and August 29, 1994 respectively, and A.W. Keith has actually filed filed a motion to dismiss with this court. Neither Upchurch nor Keith was set out in plaintiff's complaint as parties being sued, and the court does not consider either of them parties to this action. It does not appear that Dr. Jorge A. Lazarte, the estate of Dr. Dan Merck, and Barbara H Merk were prorerly served, and none of these three parties was set out in plaintiff's complaint as parties being sued. The court does not consider Dr. Jorge Lazarte to be a party to this action. However, Barbara H. Merck and the estate of Dan Merck were added as parties defendant by plaintif's September 14, 1994 amendment.

Medical Center East have all asserted, in one form or another, that plaintiff has failed to state a claim upon which relief can be granted.[3] After closely examining all of the pleadings and assertions by plaintiff and making every effort to examine the pleadings and allegations in a light most favorable to the plaintiff, the court concludes that the various motions of these particular defendants are due to be granted and plaintiff's claims aginst them are dismissed for falure to state a claim upon which relief can be granted. Although Brookwood Medical Center is charged in the complaint with libel, slander, and conspiracy, there is no futher allegation or explanation of this particular alligation in the complaint.[4] Plaintiff has also failed to make any definitive allegation aginst defendants Simon-Williamson Clinic and Alabama Psychiatric Services; they are charged with "libel", "slander", and "conspiracy to denie treatment". but nowhere else in the complaint or "Exhibit D" are these two defendants mentioned or the facts surrounding these allegations referenced. Although charged by plaintiff with "libel", "slander" and "conspiracy to denie medical attention", the only reference to actions of Carraway Methodist Center and Robert E. Howe are that Carraway and Howe "made (plaintiff and her son) wait all afternoon" and that Carraway and Howe told her that "silicone was man's mot wonderful invention [sic].[5] The court is satisfied that such allegations are not sufficient to state a valid claim aginst Carraway

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[3] Defendant Carraway Methodist Medical Center makes such an assertion by it's motion for judgement on the pleadings. Defendant Medical Center East makes such an assertion by way of a motion for summary judgement. The other five defendants do so by various motions to dismiss.

[4] The document which is designated as "Exibit D" to the complaint does alledge thar Brookwood Medical Medical Center helped "them" cover up the alledged silicone poisoning. Clearly Brookwood Medical Center was not involved in any of the activities occuring in 1971 or 1973, and infact, trere is no allegation that plaintiff has ever been admitted to or treated at Brookwood Medical Center. The court does not consider this blind assertion of a cover up by Brookwood Medical Center to be a short and plain statement of a claim as prescribed by Fed. R. Civ. p.8(a). Dismissal under rule 12(b)(6) can be based upon a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable theory. See Balistreri v. Pacifica Police Department, 901 F.2d 696, 699 (9th Cir. 1990).

[5] These statements can also be found in "Exibit D" to the plaintiff's complaint.

Methodist Medical Center and Robert E. Howe, and the claims aginst them should be dismissed. Plaintiff alleges in "Exibit D" of her complaint that Dr. William B. Nickell "demanded" an unnecessary mammogram from her. This is the only allegation aginst Dr. Nickell, and is apparently an attempt to bring a claim for medical malpractice aginst Dr. Nickell. A mammogram is a preventive measuse, and the recommendation and performance of such an examination, as a matter of law, does not constitute medical malpratice. Therefore, plaintiff's claims aginst Dr. Nickell will be dismissed. In defendant Medical Center East's motion for summary judgement, it is stated that at no time has Medical Center East employed Dr. William B. Nickell. The affidavit of Joyce Romeo, Director of Risk Management at Eastern Health System, Inc., which operates Medical Center East shows that Dr. Nickell is not and never was a employee of Medical Center East. See Affidavit of Joyce Romeo. There is no evidence submitted by plaintiff to rebut this assertion, and since the only allegation aginst Medical Center East appearing on the complaint is apparently in a agency capacity with Dr. Nickell, its motion for summary judgement is due to be granted. This is particularly true since, as noted above, plaintiff has failed to state a claim aginst Neckell for which Medical Center East arguably could be responsible.[6]

A.W. Keith, a non-party who has filed a motion to dismiss, and defendant Dr. Gordon Robinson assert the statue of limitations as a bar to plaintiff's claims in their respective motions to dismiss.[7] Plaintiff states in her complaint that Robinson was the surgeon who preformed brest implant surgery on her on November 11, 1971 and that Dr Roberson turned her in for syphilis on November 23, 1971. No other allegation aginst Dr. Roberson has been made,

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[6] Again, "Exibit D" to plaintiff's complaint alleges that Medical Center East, along with Dr. Nickell, demanded an unnessary Mammogram. For the reasons stated in footnote four, the court is satisfied that plaintiff has failed to state a claim aginst defendant Medical Center East upon which rtelief can be granted.

[7] All defendants have asserted the statute of limitation as a bar to plaintiff's claims. Although the court is concerned about the belated nature of plaintiff's complaint as to all defendants, other valid grounds for dismissal exist for some defendants in addition to asserting the statue of limitations.

barred by the applicable statute of limitations.[8] As noted earlier, A.W. Keith is not specifically set out in plaintiff's complaint as someone currently being sued, and the court does not consider A.W. Keith to be a party to this action.[9]

Defendants Jefferson County Health Department and UAB are also due to be dismissed from this action. The state of Alabama is immune from suit in any court. Ala. Const. of 1901, art. I, § 14. And, pursuant to Ala. Code § 22-3-1 (1975), the Jefferson County Board of Health is a state agency and is covered by the states's imunity from suit. Defendant UAB as a division of the Board of Trustees of the University of Alabama, is also imune from suit involving the alleged negligence of any physian practing in its facity. Williams v. Noland , 484 So.2d 428 (Ala. 1986). From the complaint it appears that the only allegations aginst UAB are in its connection with the actions of Dr. Luis O. Vasconnez. Therefore, UAB, as well as Jefferson County Board of Health, are due to be dismissed from this action based upon the above demostrated immunity.

Having examined the facts and the pleadings most favorably towards the plaintiff, the court must conclud, although intensely skeptical as to the nature and validity of plaintiff's claims, that the motions to dismiss filed by defendants Dr. Luis O. Vasconez, Babtist Medical Center Princeton, and Rayburn Thweat, are due to be denied. A motion to dismiss should be denied unless is appears beyond all doubt that plaintiff can prove no set of facts in support of her claims that would entitle her to relief. Powell v. Lennon,

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[8] The statue of limitation in Alabama for medical malprarice is also two years. Ala. Code § 6-5-482 (1975). This section does provide tolling of the statute in cases until the plaintiff discovers or reasonably should have discovered the alleged wrong. It is obvious from the complaint that plaintiff believed at the time of her surgery in 1971 or soon thereafter that she believed the doctor's to have erred. The statue of limitations in Alabama for libel and slander is two years. Ala. Code § 6-2-38(k) (1975).

[9] However, plaintiff does allege that A.W. Keith maliciously turned her in to the county health department for syphilis on May 4, 1973, and Keith has filed a motion to dismiss. Again the applicable statue of limitations for libel and slander is two years in Alabama, and there are no other facts to support any futher claim aginst defendant A.W. Keith. Therefore, to the extent that it can be argued that A.W. Keith is a party to this action, the court is satisfied that the claims aginst Keith should also be dismissed.

914 F.2d 1459 (11th Cir. 1990). In "Exibitr D" to her complaint, plaintiff alleges that Dr. Luis Vasconez left her locked up in a room for a period of time. The court views this claim as one for false imprisonment but finds no definitive allegations of libel, slander, or conspiracy to denie medical treatment. All claims other than false imprisonment aginst defendant Vasconez will be dismissed by seperate order. Plaintiff alleges that defendants Baptist Medical Center Princeton and Dr. Rayburn Thweat are "still sayg [sic] that plaintiff has syphilis". Thus, these two defendants' motions to dismiss must be denied as plaintiff has stated a cognizable claim of slander. However, all other claims aginst these two defendants are due to be dismissed as they are not supported by any allegations in the complaint.[10]

Defendants Blue Cross and Blue Shield of Alabama and Pennsylvania Blue Shield have filed a motion to dismiss the plaintiff's state law claims of libel, slander, conspiracy to denie medical attention, and breach of contract because such claims are preempted and barred by ERISA. The court agrees that ERISA supersedes all state law claims insofar as they relate to any employee benefit plan, and any such claim is due to be dismissed. There is also no support for plaintiff's allegationof libel and slander aginst these two defendant's and such claims are due to be dismissed. The only remaining claims aginst Blue Cross and Blue Shield of Alabama and Pennsyvania Blue Shield are claims involving the improper administration or maintaining of a USX employee benefit health plan. The court will treat rthese two defendants' motion to dismiss as a motion to make more definite and certain and will instruct plaintiff to amend her complaint and state clearly and preciseley her basis for the allegations aginst Blue Cross and Blue Shield of Alabama and Pennsyvania Blue Shield for failure to properly administer. or maintain the health care plan established by her employer. Any such amenment shall be limited to claims under ERISA for such alleged failure.

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10 Baptist Medical Center Princeton is alleged to have been involved in the initial operation of November 11, 1971. Any claim based upon any malpractice or wrongdoing surrounding this operation is barred by statute of limitations.

Other than naming Michael C. Buchanan as a party, the complaint does not definitively state the nature of the claims alleged aginst him. And, Buchanan has apparently not been served. The order entered in accordance with this memorandum will not affect any right or claim that plaintiff may have aginst Michael C. Buchanan.

In summary, the court concludes that all claims aginst the following defendants will be dismissed with prejudice: 1) Brookwood Medical Center; 2) Simon-Williamson Clinic; 3) Alabama Psychiatric Services; 4) Carraway Methodist Medical Center; 5) Robert E. Howe; 6) Dr. William B. Nickell; 7) Medical Center East; 8) Dr. Gordon Robinson; 9) Jefferson County Board of Health designated as Jefferson County Health Department; and 10) UAB. All claims aginst Dr. Luis O. Vasconez except a claim for false imprisonment will also be dismissed. All claims aginst Baptist Medical Center Princeton and Rayburn Thweat will be dismissed with the exception of claims for slander involving the reporting of plaintiff for syphilis. All claims aginst Blue Cross Blur Shield of Alabama and Pennsyvania Blue Shield will be dismissed, but plaintiff will be permitted to amend her complaint to clearly set forth a claim under ERISA for mismanagement on the part of these two parties. The Claims, if any, aginst non-party A.W. Keith will also be dismissed. This memorandum and the order to be entered will have no effect on arguable claims aginst Michael C. Buchanan, the estate of Dr. Dan Merck, and Barbara Merck as these parties have not been served, filed a motion with the court, or answered. In as much as a large number of defendants and claims will be removed from this action, the court finds no reason for delaying the entry of final judgement with reguard to these claims and those defendants, and the judgement to be entered will expressly direct such an entry.

DONE this 4th day of November, 1994.

/s/ James H. Hancock
United States District Judge

APPENDIX B

Filed May 22, 1996
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 94-7099

BETTYE L. COUGHLIN,

Plaintiff-Appellant,

versus

Baptist Medical Center Princeton, and its agents Rayford Thweat and Michael C. Buchanan, RAYFORD THWEAT,

Defendant- Appellees

MICHAEL C. BUCHANAN,

Defendant,

JEFFERSON COUNTY HEALTH DEPARTMENT, BLUE CROSS AND BLUE SHIELD OF ALABAMA, INC., BLUE CROSS AND BLUE SHIELD OF PENNSYVANIA, UNIVERSITY OF ALABAMA AT BIRMINGHAM, and its agents Luis O. Vasconez and others, BROOKWOOD MEDICAL CENTER, and its agents Gorden Robinson, Jr., et al.,

Defendants- Appellees,

JAMES C. UPCHURCH, DR., JORGE A. LAZARTE, Dr., DAN MERCK, DR., deceased, BARBARA H. MERCK, and the estate of Dr. Dan Merck,

Defendants.

On Appeal from the United States District Court for the Northern District of Alabama

---

BEFORE: KRAVITCH, CARNES and BARKETT, Circuit Judges
PER CURIAM:

The petition(s) for rehearing filed by appellant, Bettye L. Coughlin, is denied.
ENTERED FOR THE COURT:

/s/Philis Kravitch
United States Circuit Judge

APPENDIX C

Filed May 28 1996
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 95-6242

BETTYE L. COUGHLIN,

Plaintiff- Appellant,

versus

BAPTIST MEDICAL CENTER PRINCETON,
and its agents Rayford Thweat and
Michael C. Buchanan,

Defendant-Appellee,

RARFORD THWEAT, et al.,

Defendants.

On Appeal from the United States District Court for the
Northern District of Alabama

BEFORE: KRAVITCH AND COX, Circuit Judges.
BY THE COURT:

Appellant's "motion establishing appealable error and bias of this court," construed as a motion for reconsideration of her motion to accept record excerts as is, is DENIED. Appellant is ordered to file record excerts in Compliance with 11th Cir.R. 30-1 within 21 dars of the date of this order. If Appellant fails to do so, the clerk is directed to disdiss this appeal for want of prosecution.

Appellant's "motion asking clerk to be sanctioned" is DENIED.

APPENDIX D

UNITED STATES COURT OF APPEALS
56 Forsyth St., N.W.

Atlanta, GA 30303

Ex Parte: Bettye L. Coughlin, Pro Se,)
Petitioner, Appellant,)
vs.) Re: DC DKT No.
BMC, et al.,) 94-7099 and 95-6242
Defendant, Appellee)

MOTION ESTABLISHING APPEALABLE ERROR
AND BIAS OF THIS COURT

The lower judge issued his Partial Final Order on 11/4/94, it was apparent that he intended to dismiss everone at that time and we appealed and asked for a Stay to issue, he granted it. Then he went ahead and started dismissing the rest. Appellant sought a Motion for a Stay from this Court but as you will note your clerks refused them.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
56 Forsyth Street, N.W.
Atlanta, Geogia 30303

Miguel J. Cortez
Clerk

March 7, 1996

Ms. Bettye L. Coughlin, Pro Se
1616 Mann Drive
Birmingham, AL 35214

No. 94-7099- Coughlin v. Baptist Medical
DC # CV 94-H-2310-S

Dear Ms. Coughlin:

Your motion for a stay is returned, because you do not indicate what it is you want stayed and for what length of time. Also, this Court has not recieved a response to the postscript of the letter dated Febuary 17, 1995 (copy enclosed).

After this office recieves the Certificate of Readinness from the District Court showing trhe record is complete for purposes of appeal, the briefing schedule will issue.

Sincerely,

Miguel J. Cortez, Clerk
By: Valda Davis/hwb/
Deputy Clerk

In our motion we pointed out that Mills's brief was certified on 2/3/95 and postmarked on the 6th, this is almost a week before the judge issued his order for briefs, and futher, proves the judge's bias.

OF COUNSEL:
PORTERFIELD,HARPER &MILLS, P.A.
22 Inverness Center Parkway, Suit 600
P.O. Box 530790 /s/ CHRIS STILL
B'ham, AL 35233-0790 Chris Still (ST1015)

CERTIFICATE OF SERVIVE

I hereby certify that I have on this 3rd day of [January]FEB., 1995 served a copy of the foregoing on counsel by mailing a copy of same by United States Mail properly addressed and first class postage prepaid, to-wit:

This Court is well aware that you intentionally "lost" the first brief and we had to get the postal inspectors after you before it was "found". You allowed De Ramus the Health Dept. file a brief as "timely" over 6 months after the fact, and you have never notified the University of Alabama that their breif was untimely.

OFFICE OF COUNSEL
THE UNIVERSITY OF ALABAMA SYSTEM
[Letterhead of the University]
March 14, 1996

Mr. Miguel J. Cortez
Clerk of Court
United States Court of Appeals
Eleventh Circuit

RE: *Bettye L. Coughlin vs. Baptist Medical Center, et al.*
Case No. No. 95-6242

Dear Mr. Cortez:

Please file on behalf of defendant-appellee, The Board of Trustees of The University of Alabama, the inclosed original and six copies of its brief in the above-referenced case. Also, please stamp "Filed" the additional copy and return it in the self addressed stamped envelope.

Sincerly,

/ch

/s/ Gary C. Smith
Legal Counsel

cc: Ms. Bettye L. Coughlin
All Counsel of Record

Also, Appellant calls this courts attention to the fact that Blue Cross filed their brief "out of time" they are part of 95-6242 and this Court has already "noted" the fact.

On 11/8/94 (26) filed 8 volumes of Medical Records in suport of her Motion. At that time Plaintiff informed the judge that; (1) it was ongoing, (2) the judge was aware that this was not all of her records, (3) certain records held by defendants were being concealed, and (4) the judge by denieing us a "full" discovery was intentiionally violating my rights. You cannot wilfully conceal the facts and claim that the "Statue of Limitations" has run.

On 2/10/96 I filed my brief in 95-6242 along with excerts as in 94-7099. The briefs and excerts were returned the next day by UPS. We contacted your clerk and were toldthat we would have to take out every thing. We argued that (c) the answer, response, counterclaim, cross-claim and replies thereto; covers our excerts. Futher, it has always been the rule (Appendix) that exibits are admissible. Your clerk sent it back with out filing it again. This started off with this order of 12/21/95.

UNITED STATES COURT OF APPEALS
Eleventh Citcuit
December 21, 1995

Bettye L. Coughlin \A
1616 Mann Drive
B'ham, AL 35214

RE: 95-6242 Coughlin v. Baptist Med. Center
DC DKT NO.: 94-02310 CV-H-S

Pursuant to Eleventh Circuit Rure 42-1(b) you are hereby notified that upon expiration of fourteen (14) days from this date, this appeal will be dismissed by the clerk without further notice unless the default(s) noted below have been corrected:

* File appellant's brief, together with a motion to file brief out of time.
* File record excerpts as required by 11th Cir. R. 30-1, together with a motion to file the record excerpts out of time.

11th Cir. R. 42-1(b) also provides that "If an appellant is represented by appointed counsel, the clerk may refer the matter to the court for possible disciplinary action aginst counsel in lieu of dismissal."

Sincerely,
/s/ Miguel J. Cortez, Clerk
Reply To: Jennifer Hammons (404) 331-6147

As this Court will note I was not late this was **ANOTHER** intentional **LIE**, by you and your clerks.

On 2/23/96 Appellant talked to your clerks and though she had it worked out, though your clerks had returned the"motion" and were out right refusing to submit it to the Court, Jennifer Hammons said, "the defendants have rights. The Court demands that you serve a copy of these excerts on the defendants." We agreed and made copies that night, as can be seen by the Office Depot receipt (on the right). We mailed them on 2/24/96 to the defendants attorneys, and to this Court, as noted by the Postoffice Receipt on the left.

P 317 630 677
U.S. Postal Service
Reciept for Certified Mail
Dated 02/23/96

Cash Register Reciepts
Dated: 02/23/96
{showing I mailed all parties a copy of the excerpts}

$7.10

Several days later we recieved anothe directive from your clerk. We told her we had mailed the excerts and she said that was taken care of.

UNITED STATES COURT OF APPEALS

Eleventh Circuit

Febuary 22, 1996

Bettye L. Coughlin, Pro Se
1616 Mann Drive

RE: 95-6242/ Coughlin v. Baptist Med. Center, et al.
DC DKT NO.: CV-94-2310

Enclosed are your record excerpts and your motion to file aditional excerpts in the above-referenced appeal, which are being returned to you unfiled.

Please be advised that pursuant to 11th Cir R. 30-1, one copy of record excerpts must be served on each party. Pursuant to 11th Cir. R. 25b, your motion must be served on each party.

Per our conversation on Febuary 21, 1996, your requested I send you this letter and return your documents unfiled. You stated these rules do not apply to you and you do not plan to serve either document to anyone but this Clerk's Office.

Pursuant to Eleventh Circuit Rure 42-1(b) you are hereby notified that upon expiration of fourteen (14) days from this date, yhis appeal will be dismissed by rthe clerk without further notice unless the default(s) noted above have been corrected.

Thank you for your attention to this matter.

Sincerely,
Miguel J. Cortez. Clerk
/s/ Jennerfer Hammons
Deputy Clerk

Let the record show that we had already introduced **ALL** these records, except those from Carraway. Those were introduced after Carraway intentionally lied to this Court and to show that a "full

discovery" has not been had. It has always been held that "newly discovered" evidence is admissible if the moving party can show that it created a manafest injustice. In this case Carraway denied that they were and still are Appellant's primary "care giver". All these records were used to show that "it has continued", This is the facts. I remind this Court that I won the ERISA appeal as the letter from Pitts. Blue Cross Blue Shield shows.

BLUE SHIELD OF PENNSYLVANIA

January 13, 1993

O. Gordon Robinson, Jr., M.D.
2022 Brookwood Medical Center Drive

Patient Bettye L. Coughlin
Contract ID 427427968
Inquiry # 92364046055

Dear Doctor Robinson:

This is in reguard to your inquiry to Blue Cross and Blue Shield of Alabama concerning proposed surgery for the subject patient.

Pennsyvania Blue Shield is the Control Plan for USX Corporation; therefore, your inquiry was refered to us for review. Based on our Advisor Review of the information provided, the removal of the breast implant would be a covered expense. However, final determination with respect to eligibility will not be made untill a completed claim form and operative report is recieved.

By copy of this letter, I am advising Blue Cross and Blue Shield of Alabama of the results of our review. Therefore, once surgery has been completed, please forward the aforementioned information to their Plan for processing.

I trust this will serve as a satisfactory response to this matter.

Sincerely,
/s/ Sally A. Snyder
Customer Service Western Region

cc: Ms. Bettye L. Coughlin

The record shows that (1) we did not solicit the "implaints", and infact Betty Bailey of Alabama Blue Cross and Blue Shield

has (1) gotten together with all the hospital in this area and denied Appellant admittance, (2) tried to futher, intentionally wilfully, tried to futher rupture the implaints with the mamogram, (3) conspired with the doctors (note fax numbers) when Appellant

NOV 09 '92 12:13PM GORDON ROBINSON M.D. 205-870-0551
NOV-09-1992 11:22 PLASTIC SURGERY CENTER 205 838 3068

refused to allow Nickell to communicate with Robinson, (tried to force Appellant to undergo an opperation (removal of implaints) that she knows is "criminal in nature" (FDA), (5) force Appellant to pay for that operation and thereby allowing Bailey to cancel our insurance, because I had sought out this "criminal operation".

Appellant has told this Court and Congress that Judge Pointer was well aware of all these facts and we would never get any medical attention or be allowed to sue. We told them that as usual in Alabama the federal court would reach out and protect "her doctors". As usual you first say you can't prove it and when we do you say, "refused to comply with the rules". A ppellant has been notified over **20** times that she had not complied with the rules in each case it has been proven that you and your pets are in default. Files a brief 6 months late and this Court says, "it's timely".

Now we get the following from you;

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
stamped APR 8 1996

No. 95-6242

Bettye L. Coughlin,

Plaintiff-Appellant

versus

Baptist Medical Center Princton,
and its agents Raymond Thweat and
Michael C. Buchanan,

Defendant-Appellee,

Raymond Thweat, et al.,

Defendants.

On Appeal from the United States District Court for the
Northern District of Alabama

ORDER:

Appellant's "cover letter" filed 2/26/96, construed as a motion to accept Appellant's record excerpts as is, is DENIED. Appellant is ORDERED to file amended record excerpts in complaince with 11th Cir. R. 30-1 within 21 days of the date of this order. Appellant is reminded that she may only include copies of those documents listed in 11th Cir.R. 30-1(a)-(j).

/s/ ILLEGABLE
United States Circuit Judge

This Court has been tring to dismiss this appeal since it was filed, this is only another excuse. We made copies of the excerts and mailed them to the defendants on 24th and we suplied you with a "certificate of service" along with the cover letter.

IN CONCLUSION

Appellant was under a duty to establish the bias of this Court. We sued and named Alabama Blue Cross & Blue Shield because it was known that "Pointer was protecting them". As you are aware ERISA is only a defence if the party abides by the decission reached on appeal; The following are the controling cases;

WHEELUS v. NECA/IBEW WELFARE TRUST FUND

Cite as 788 F.SUPP. 1213 (M.D.Ga. 1992)

ly remote in content" from the plan. *Compare Howard v. Parisian, Inc.*, 807 F.2d 1560 (11th Cir.1987) (claim of intentional infliction of emotional distress arising out of an administrator's refusal to pay benefits is preempted) *with Clark v. Coats & Clark, Inc.*, 865 F.2d 1237 (11th Cir.1989) (claim of intentional infliction of emotional

distress arising only out of employer's wrongful termination of plaintiff is not preempted). Thus, plaintiff's intentional infliction of emotional distress claim is preempted.

In our case, plaintiff has already received an award for the contractual relief to which she is entitled through the order of the Superior Court of Houston County. The order of that court demands that defendant continue to pay for plaintiff's medical expenses. Plaintiff's claims in this case are claims for compensatory and punitive damages arising from defendant's failure to pay these expenses. Such extra-contractual and punitive relief is not permitted under ERISA at this time.

ERISA preempted this claim because the employer's conduct in *Howard* was not wholly remote in content from the refusal to pay benefits. *Howard*, 807 F.2d at 1564.

Despite the *Howard* court's decision, two

years later we held that ERISA did not preempt an employee's claim of intentional infliction of emotional distress. *Clark v. Coats & Clark, Inc.*, 865 F.2d 1237 (11th Cir.1989). In *Clark*, the employee's claim for emotional distress related only to his termination of employment, but not to the denial of benefits as in *Howard*. *Clark*, 865 F.2d at 1243 (Clark claimed that "his employment termination was carried out in a manner which was intended to inflict severe emotional distress upon him."). Thus, the *Clark* court found no preemption because "the only connection between Clark's tort claim and ERISA is that the conduct arose in a factual setting which overlapped that of Clark's ERISA claim." *Clark*, 865 F.2d at 1245.

I have underlined and placed *'s on the controling statements. Our cotract states that if ABCBS refuses to act in a reasonable manner we can "chose the forum" to sue in. When Bailey fabricated evidence to try to prove I sought the implaints she placed herself outside ERISA. When she said that even though Penn. Blue Cross & Blue Shield had stated that the operation was nessary and covered, "hell would freeze over before I would get it", this removed it from ERISA. When she contacted all the local hospitals and told them I was not to be admitted, this removed it from ERISA. ERISA is only a defense if you comply with it. Bailey of ABC&BS refused to comply and therefore "waived" the protection of ERISA..

Appellant wanted to relie on the "Record on Appeal" or an Appendix, but this Court made Appellant supply an "excert" at

great expence and personal hardship. You stated that, "any issue I took up with the Court would have to be supported by the excert. That would include any evidence the lower court refused to recognise". Therefore, I included everything to show bias by your lower judge. As can be seen through I tried to comply, you have been tring to "throw her out" on any excuse, as can be seen by the 12/21/95 order (pgs 4&5). (and you couldn't possibly ruled on the "Motion for Aditional Parer" because Jennifer shipped them **ALL** back by UPS, (any lie that is nessary judge?). On the otherhand Mills in both cases wilfully refused to comply, as to size and adding Appendix and you did nothing. He was late filing and you knew it but refused to sanction him, he didn't include a "Certificate of Service" (because it was late) and this Court is up to its old tricks again. West Publishing is getting tired of "printing blank pages" for Alabama, ***Coughlin vs. Board, 442 So.2d 104.*** Maybe this time you'll give them immunity under ERTSA, too.

Appellant expects acceptance of her excerts within 5 working days. I f we do not have it, we intend to start FAXing this to the different Congressmen, Represenatives, organizations, ect. We have been told by the Birmingham News that they know thousands of women that this Court has done the same way and they will not do a story because there are "so many". I have done this Motion in a form that complies with your rules and is self explainitory on a FAX.

DONE this the 16 day of April, 1996.

/s/ Bettye L. Coughlin
Pro Se

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Civil No. 95-6242

Bettye L. Coughlin
Plaintiff-Appellant

vs.

BMC, et al.,

Defendants-Appellees

ENTRY OF DISMISSAL

Pursuant to 11th Cir.R. 42-1(b), this appeal is hereby dismissed for want of prosecution because appellant failed to file the record excerts within the time fixed by the rules, efective this 3rd day of July, 1996.

DATED 7/3/96

FOR THE COURT-BY DIRECTION

/s/ Jennerfer Hammons (Deputy Clerk)

APPENDIX F

Filed Aug. 11 1994

THE STATE OF ALABAMA
JEFFERSON COUNTY,BIRMINGHAM
CIRCUIT COURT, CIVLE DIVISION

Bettye L. Coughlin,
Plaintiff

vs Case No. CV9405730

BMC, Rayford Thweat, et al..

On 11/10/71 Plaintiff was admitted to Birmingham Baptist Hospital now Baptist Medical Center Princeton or BMC. At that time she was sufering severe vaginal bleeding and Dr. James C. Upchurch had discovered tumoras in the left breast. Dr. Upchurch felt that the tumoras could be cancerous and demanded that they be removed and biopsied. Plaintiff then and now objected and stated that the sist ran in her family and are benine. But the doctor insisted, and her husban was called in and offered the following by Dr. Dan Merck the surgeon. He told the husban (and later the wife) that he had this friend that had just come back from Califomia after watching Rachel Welche's boobs put in. He and Merck said that their friend, Gordon Robinson was a Plastic Surgeon and he needed the experence and business. They futher,

said that they could get Blue Cross to pay for the boobs as "reconstuctive surgery". Mr. Coughlin insisted that Mrs. Coughlin take this "freebe" even though Mrs. Coughlin objected. The surgery was done on 11/11/71.

At the time of the surgery Plaintiff was normal and had no adnormal blood condition as can be seen from BMC's own medical records. Plaintiff submitts a copy of the "History and Physical Examination" exibit A and ask that the Defendants admit the truthfulness of the document. Futher, Plaintiff submitts Exibit B, a letter from Robinson to Upchurch showing that Unchurch and Merck hunted up Robinson.

Plaintiff became extreamly sick after the surgery and when she was discharged she was still sick. When time came for her first checkup Robinson sent her back to Merck. Plaintiff was extremely upset, because she had been told that she would not see Merck again unless she had cancer. Plaintiff was driven by her son to Merck's office. Merck and his wife, who acted as his nurse took Plaintiff into the examination room and told the Plaintiff that she had syphilis and gave her the following pitch. "We won't have to report you to the Health Department or tell your husban, if you'll alow us to give you this shot of penicillin. Plaintiffsaid no and the doctor and his wife then forceably tried to give her the penicillum, which (see Exibit A) they knew she was alergic to, Plaintiff then started to screem. The next can best be told by Plaintiss's son in the following sworn statement.

I (Harry J. Coughlin, Jr.) was sitting in the waiting room waiting for my mother, and all of a sudden I hear this screaming and I go and open the door and I'm wittnessing this scene from a Frankinstine Movie. The nurce is on one end of the table leaning forward with both arms out and there is Merck with his arm back holding this giant econo size syringe filled with this milky substance, fixing to stab my mother, who is between them. I'm shocked and I blert out "what the hell do you think your doing". The doctor backs off and gives me the same pitch he gave my mother, about he will not have to tell the Health Dept. or my father if mother will just take the penicillin and I told him that both of us are highly allergic to penicillin, a we were leaving. He said he would report us and I told him that I would save him the troble, we

were going to the Health Dept. now. We did and the man was waiting for us with another shot of penicillin. We declined the shot and he gave us the same pitch that Merck gave us. I told him that I had just got out of the Marines and the law says that if you have syphilis HE HAS TO REPORT IT. If my mother had it my farthe had it and they got it some where. I told him that he was a liar and we left with him threating to arrest us. I /s/ Harry J. Coughlin, Jr. hereby swear the above to be true.

Plaintiff submitts the following V.D.REACTION CARD obtaind from the Jefferson County Health Department (Exibit C) as proof that Upchurch and Robinson turned her in for having syphilis on 11/23/71. Futher, Plaintiff asks for admission that the Defendants knew that Plaintiff did not have, then or now, syphilis, as evidenced by the CARD itself "Disposition NOT INITIATED". As can be seen by Exibit C each time Plaintiff got sick she was wrongfully and maliciously turned into the Health Department for syphilis that she never had.

Plaibntiff was wrongfully and maliciously turned in for syphilis on 5/4/73 by A.W. Keith (no followup done), by Jorge A. Lazarte of UAB 6/6/73, and Keith again in 4/22/77. At this time the Health Dept. says they "offically" quit carrying the report. They now acknowledge that Plaintiff never had syphilis. As was explained to Plaintiff by Dr. Keith the physicans were hiding behind the Health Departments' "sovern immunity" we the victums of silicone would never be able to prove that silicone was bad for us. Plaintiff knows and the records show that the Medical Comunity (Dr. Rayford Thweat of BMC) are still saying that Plaintiff has syphilis, though now Thweat says that she has gotten treatment for it, though he doesn't know where. As the records show this is an ongoing thing. The Physicans named are still tring to say it is syphilis when they the Health Department and the FDA all knew from the beginning that it was the silicone, and the term is a "False Postive". Also the record will show that Plaintiff was "over medicated" by P.W. Scokel, a partner of Keith of Longview General Hospital and that infact Lazarti was a former teacher of Scokel, once again the silicone was used to blackmail Plaintiff.

In 9/17/82 Plaintiff sought out Dr. W.H. Taylor, he did tests and determined that it was not syphilis and started treatment for

fungus. These treatments were, to a limited degree, in the opinion of Plaintiff, successful.

IT IS Plaintiff's contention that the implaints were ruptured by the surgeon at the time of the opperation. Plaintiff feels that the record proves that the sergeon and hospital knew that the implants were ruptured and the "Tuskegee Protocol" was instituted. Every physican Plaintiff has seen has been sure of one thing, "silicone is good for you". Plaintiff has been denied human medical help. Petitioner includes, as Exibit D, the 7 page cover letter to the Federal Court and BMC.

Plaintiff has serious medical problems that Thweat has refused to treat and or acknowledge. The physicans he brought in to treat Plaintiff refused to treat and/or acknowledge the condition. They kept Plaintiff on medication that they knew she was allergic to (see Hillcrest Records) and Thweat refused to make himself avaible when Plaintiff needed him, and INFACT THWEAT WALKED OFF THE ÇASE and in effect lect the Plaintiff without a doctor in the hospital BMC. This placed a undue burden on Plaintiff and her son. Futher, as Thweat and Bucanan Knew or should have known all these syptoms are "classic" indications of silicone poisoning and as Thweat well knows Plaintiff displayed these before any of this became popular. It is Plaintiff's contention that the implants were and are ruptured, that the body reacts to the silicone as an invasion, that the person goes high, can't sleep, irritated bail syndrome, stomach cramps, ect. Finally, the immune system incapsulates the leak and the body returns to normal. This condition is futher agrivated by the fact that the Plaintiff was allergic to penicillin which the doctors and the hospital knew at the time of the opperation.

Even though all parties acknowledge that the silicone implants are ruptured. Plaintiff is still unable to get them removed in a safe manner. Futher, Blue Cross has breached it's contract with plaintiff. As Plaintiff stated this was a "freene" Plaintiff did not pay for the implants and she and her son know that Blue Cross was billed. Futher, Plaintiff has been told by Robinson that he does not have any medical records and he doesnot contend that Plaintiff paid him. Plaintiff did not seek out cosmetic surgery and has never wanted these boobs.

AT THE TIME of this opperation Plaintiff was a middle aged woman, Housewife, with a Real Estate Degree that was considering going into business. My son was going (and now is) to be a lawyer. This illiness cost me my health and career of both me and my son. The illness has become steadly worse and the Medical Profession in Alabama has made it impossible to get help, and infact some treatment (momagram) were designed to futher agrivate the condition. Blue Cross, BMC and Thweat have made it impossible to get medical help in this state.

We are at this time sueing;

(1) Jefferson County Health Department
    (a) slander
    (b) libel
    (c) conspiring to denie Plaintiff medical treatment
(2) Blue Cross Blue Shield of Alabama
    (a) breach of contract
    (b) libel
    (c) slander
    (d) conspiring to denie Plaintiff medical treatment
(3) Blue Cross Blue Shield of Penn.
    (a) Breach of contract
    (b) libel
    (c) slander
    (d) conspiring to denie Plantiff medical treatment
(4) UAB and it's agents Luis O. Vasconez and others.
    (a) lible
    (b) slander
    (c) conspiring to denie
(5) Brookwood Medical Center and it's agents Gorden Robinson, Jr.
    (a) Lible
    (b) slander
    (c) conspiracy to denie
(6) Medical Center East and it's agents William B. Nickell
    (a) lible
    (b) slander
    (c) conspiracy to denie treatment
(7) Carraway Methodist Medical Center and it't agents Robert E Howe
    (a) libel
    (b) slander
    (c) conspiracy to denie treatment

(8) Baptist Medical Center Princeton and it's agents Rayford Thweat and Michael C. Buchanan
    (a) Lible
    (b) slander
    (c) conspiracy to denie treatment

(9) Simon-Williamson Clinic PC and it's agents
(same)
(10) Alabama Psychiatric Services and it's agents
(same)

Plaintiff is not just sueing for what has been done to her and her family, she is sueing for what these parties are continueing to do to her. If she is part of a study such as the blacks at Tuskeegee, where they were given syphilis and refused treatment, we want the study terminated and the ruptured implants removed. Plaintiff is being forced by the Medical Society of Alabama to suffer from leaking silicone.

Plaintiff is asking $1,000,000.00 for lost wages from each of the parties and agents.

Plaintiff is asking $1,000,000.00 actual damages from each of the parties and it's agents.

Plaintiff is asking $5,000,000.00 for pain and suffering that the parties and their agents have caused.

This is an ongoing case and Plaintiff moves the court to consoladate the above action with case SM 94 7686. Plaintiff demands a jury and files the above action in circuit court.

/s/ Bettye L. Coughlin
1616 Mann Dr.
B'ham, AL 35214
Ph: (205) 798-5158

Dr. James C. Upchurch
1310 Alford Ave., B'ham, Al 35226

Dr. Dan Merck
Address unknown

Dr. William B. Nickell
Suit 205, 52 Medical Park East Drive, B'ham, AL 35235

Dr. Gordon Robinson, Jr.
Suit 211, 2022 Brookwood Medical Center Drive, B'ham, AL 35209-4526

Dr. Robert E. Howe
1529 North 26th St.,B'ham, AL 35283

Dr. Luis O. Vasconez
619 So. 19th St., B'ham, AL 35233

Dr Jorge A. Lazarte
619 So. 19th St., B'ham, AL 35233

Dr. Rayford Thweat
840 Montclair Rd., Suit 122, B'ham, AL 35213

Jefferson County Health Department

Blue Cross Blue Shield of Alabama
450 Riverchase Parkway East, B'ham, AL 35298

Blue Cross Blue Shield of Pennsyvania
Camp Hill, PA 17089

Alabama Psychiatric Services
840 Montclair Rd., Suit 122, B'ham, AL 35213

BMC Princeton
840 Monclair Rd. B'ham, AL 35213

UAB Hospital
619 So. 19th St., B'ham, AL 35233

Carraway Hospital
1529 North 26th St., B'ham, AL 35283

Medical Center East
52 Medical Park East Drive, B'ham, AL 35235

Brookwood Medical Center
2022 Brookwood Medical Center Dr., B'ham, AL 25209

EXIBIT A

Birmingham Baptist Hospitals
Birmingham, Alabama

HISTORY AND PHYSICAL EXAMINATION

NAME: COUGHLIN, BETTY Room No. 289A Unit No.
Date 11/10/71 Physician: Dr. Dan Merck by
Dr. Ken Miller
ADMISSION DIAGNOIS: Left Breast masses.
PRESENT ILLNESS: This 42 year old gravida 4, PARA 4, ab o white female was admitted here October 6, 1971 with a history of

menorrhagis beginning with the preceding period six weeks before period. She underwent dilatation and curattage and cervical biopsy at that admission and path report was secreatory endoetrion and chronic cervicitis, respectively. Physical examination at that time revealed two fibroadonmata of the left breast in the medial upper and lower quadrants. She refused biopsy at that time but has reconsidered and is now readmitted for excisional biopsy of the fibroadenomata. If the massesare fibroadanomatous, she will undergo augumation mamoplasty.

Pertinent labaratory data obtained during that admission was normal metabolic profile, negative UCG. VDLR which was reactive to 1 dilution. Normal urinalysis and a normal chest x-ray. PAST HISTORY AND REVIEW OF SYSTEMS: Unremarkable. She alleges to be allergic to Miltown and Penicillin. She had a vaginal cyst removed by Dr. Carmichael in 1960 and recently had a D&C here.

...

EXIBIT B

NOV-09-1992 11:23 PLASTIC SURGERY CENTER 205 838 3068 P.16

Dr. James C. Upchurch
804 Princeton Avenue
B'ham, AL 35211
RE: Mrs Bettye L. Coughlin
Dear Jim:

Thanks for sending the above to see us. The ...today with a history of two painful lunps in t.....

My examination, as you suggested, revealed two fibroadenmas of the breast, and we have schelued.....West End Baptist Hospital and your office. T.....very much if you would remove the fibroadanomas ..... augmentation at the same time. I will talk to ....

Again, many thanks,
Yours sincerely,
O. Gordon Robinson, Jr., M.D.
OGRjr/mo

EXIBIT C

V.D. REACTOR CONTROL CARD

Name: Coughlin, Betty
Address: 1616 Mann Dr
City Forestdale

Age Date:	43 Dils	Race W Physician or Clinic	Sex F Disposition	Date
10-9-71	8	Dr. Upchurch/ Montclair / Bapt. Med.	0	11-23-71
4-20-73	2	Dr. A.W.Keith/ Longveiw Hospital	0	5-4-73
5-21-73	8	Univer. Hosp.	0	6-6-73
4-22-77	4	Graysville Med. Group Dr. W.A.Keith Grays-ville Ala.	not iniciated	4-22-77

EXIBIT D

Claims Administrator
P.O.Box 5666
Houston, TX 77256

Bettye L. Coughlin
Harry J. Coughlin, Jr.
1616 Mann Dr.
B'ham, AL 35214
Ph: (205)798-5158

6/25/94

To Whom it May Concern,

I have inclosed 10 volumes of medical records and other documents. They are bound and numbered on the back. I consider that the doctors and Dow intentionally covered up the fact that this product was dangerous. I think that the statement made toi me and my son by doctor Dr. Howe of Carraway in 1992 (Vol.2) about sums it up.

"All this is media hype. We (meaning the medical profession) are not just about to admit that silicone is or could be bad. Just look at what we use it in. Heart pacemakers are inclosed in it. Joints are made out of it. Pills are coated with it, hell, even scaple

blades are coated with it, I'm not just about to admit that silicone is bad for you.

It's just like this splinter or any other foreign body introduced into the body. It causes an infection, but that can be controled with antibiotics and cortizone."

This was said to me and my son 30 minits after he closed his office and had even seen a walkin before us (and we had a 2 oclock appointment). Vasconez of UAB put us in a room to wait and then ran out of the hospital and went home and the hospital had to call him back in. Nickell's and Blue Cross insisted that I have a mammogram (even though BC was not paying) and both him and BC admitted that it was unnessary and the prezure would futher rupture the implant (Vol.10, pg.3) and they knew that it was ruptured (Vol. 4, pg.3) and this would just futher agrivate the condition of the overdose of silicone in the blood stream. Futher, they both knew that Robinson had already agreed that they were ruptured an "old and rotten", and that they had not "lasted a lifetime" as he had promised. (Vol.10, pg.26)

This is the proceedure that Robinson, Nickell, and Vasconez had worked out with Dow and the Plastic Surgery Board (Nurse Mary) (Howe says that he would refuse to remove any under any condition). You come in and sit down, they give you a local anesthetic, then they would make two vertical incisions under each breast. Then they would reach in and remove as much goop as they could reach. (1) They are notr going to remove the implant itself, (2) They are not going to remove all the silicone gel, (3) They are not going to remove the incaposulated silicone "lumps", Nurse Mary says that they are going to be intentionally left in to fill the cavity left by the removal of the gel, (4) They admit that this procedure is guaranteed to give you a massive rupture.

It is Plaintiff's opinion that when the original opperation was done the doctors screwedup, and infact the implant was ruptured intentionally, as evidenced by the fact that they (the plastic surgeons and Dow) had a SOP in place to take care of anyone that showed the reaction to silicone poising. As you see by the V.D. Reactor Control Card (Vol.10, pg.1) they turned you in for syphilis even though they knew that you did not have it as evidenced the disposition "not initated", as you know the state has

"sovern immunity" to lie, cheat, and steal and coverup for the medical comunity.

It is Plaintiff's contention that the human body handles small ruptures in the following way. On rupture a small amount of the gel, its actual composition unknown, leaks out. Some of the ingredients go directly into the blood stream, this causes the victum to go "HI" almost imediately, then the nails become inflamed and the hair begins to come loose and fall out and you begin to breakout all over and itich. The body mobilises it's immune system and the residue is incapsulated and the hole is patched, TEMPORARILY. Periodically this and other holes open and the same symptoms occure (as expected by the doctors) and once again the doctors reported the victum for syphilis as is shown by the Health Dept. Card (Vol.10, pg.1). We were wrongfully and maliciously reported in 71, 73, 77 and they continued untill Roper left CDC in Alanta, as is shown by (Vol.9, pg.7) lab record in 1982. At this time the Health Dept. doesn't want to play but it still refuses to sanction the doctors that used it as an instrument of torture for all these years. These ruptures are a classic case of "you either get better or you die" and you the medical association have intentionally refused treatment and the operation to remove the implants is intentionally designed to massively rupture the implant in such a way that the body will find it impossible to seal off the leak.

On 11/23/71 I went back to Upchurch and Merck. At that time he said that I had syphilis and tried to hold me down and give me a giant dose of penicillin which he knew I was allergic to. He said that if I allowed him to shoot me he would not report me to the Health Dept. I refused. He then forceabely tried and my son, hearing the screams, entered the room and stoped him. He then gave my son the same pitch including that he wouldn't even tell my husband, my son told him that he was a Marine and he (the doctor) was crazy. He futher, told the doctor that we were going to the Health Dept., NOW. We did and the employee was waiting in the basement with a small shot in his hand. He gave us the same pitch as the doctor. We told him that I was highly allergic to penicillin and refused. We then told him that we didn't have it when I went in (Vol.1, pg.10) and if I now had it it was either the hospital or my

Husband. We then told him we were leaving and he could send out the cops at his own risk. Me and my husband then took bood test (marrage) in this state and Mississippi and they showed that neither of us had VD, and the Jefferson County, Alabama, HealthDept. now admitts that they knew we didn't have VD the whole time. In fact three of my children served in the Armed Forces and my son had just recieved his Honorable Discharge from the Marines, and my mother is still alive and none in my family has had syphilis. But as these records both Thweat and Dr. Keith insist even now that I will continue to have it and suffer from it the rest of my life. And both have insisted that "no treatment will ever cure it". But as you can see BMC and Thweat are still tring to push it that I have VD, "Got it treated somewhere else". This would be a nice trick considering that the medical association has made that imposible to get treatment anywhere else.

Futher, when I got the implants I did not want them. The doctor discovered that I had lumps in my breasts (whole family) and told my husband that he had to iperate to see if the lumps were cancerous. Since they were going to operate anyway he (the doctor had this friend that was a plastic surgeon (Robinson) and he had just come back from California and had watched them put in Rachel Welch's boobs in. Since the boobs would be free, Blue Cross would pay for reconstructive surgery. My husband agreed because they would be FREE and infact we never paid a cent for them and infact Blue Cross was billed as seen in (Vol.4, pg.20). We were not aware that they were cosmetic untill we tried to have them removed and now Blue Cross got together with Dr. Nickell and fabricated the record contained in (Vol.4) as you can see, These pages were faxed from Dr. Nickell's office to Bailey of Blue Cross of Alabama. Since Dr. Robinson still claims not to have any medical records, Bailey and Nickell had to have fabricated parts of this file, a procedure that we now understand that Blue Crass is using on a regular basis to denie coverage as a "preexisting condition". Infact when we asked to see her surerior (Till) or be allowed to put it before the Board (by this time even the guards on duty agreed that she had fabricated the page in question) she ordered the guards toarrest us and forceably remove us from the building, this is not denied by Blue Cross. As ytou can see we

filled reports on this with the proper athorities (Vol.10, pg. 10). The Medical association told us to "go to HELL" and the State Insurance Dept. said that it was criminal what had been done to us, but that the Labor Dept. had control over Blue Cross and our contract. The Federal Government has refused to reply at all.

We are not just sueing for the past wrongs done to us, we are sueing fof the present wrongs. When we reported this to Congress last year and they made FDA finally take our report that no one ever had silicone poisioning, they had syphlis, and when they couldn't make that fly anymore we had fungus (athleats foot) or something else just as silly or as horible as AIDS. But none of us has silicone posining. When we described the ONLY opperation offered to us victums, even the FDA said it was criminal. Instead of removing the implants the Medical Association was intentionally rupturing the implants. Now Dow and the AMA will do a study and proclaim that there was no noticable difference after the implants were removed and infact in some cases there was a marked increas in symptoms in some cases. We want the silicone out under safe conditions, in the hospital, and we want all this posion out, the gel, the covering, and the lumps. Nobody that we have actually described this operation has disagreed that it is criminal and the lawyers we have contacted have all said that they are being presured by Judge Pointer and cannot represent us the victums in this case. This is not atypical of Alabama where we are noted for, "He had every lawyer in Alabama defending him and none". After all Hare, Jr. won the Pinto case, he came back to Alabama and sought out a bailiff to file a class action to STOP anymore suits on Ford. This might have been acceptable if the Bailiff had have owned a Pinto, but he didn't, and Francis was censured for barratry and champerty. This is to be expected in Alabama, we told all the senators that that was why it was brought to Alabama, we all remember Tuskeegee and the Syphilis experment, this is only a continuation.

I have included 10 Volumes of Medical Records and some odd pages. The lawyers in Alabama and 1-800-9-MANDEL have systematically excluded every case that can prove Dow and the AMA knew that certain people would be implanted with ruptured implants, that they would display certain symptoms, and the AMA

used the Health Dept. and the threat of exposure, having syphilis to control the victums if they complained. As fessey Helm's office said "LIFESTYLE HELL'. The Health Dept. and Dr. Samerson are no longer backing the AMA and gave us the V.D.R.C.C. (Vol.10, pg. 1)in 92. But there are still doctors (Tweat) that still try to make it stick that I have syphilis and it doesn't show because it's congenital. I ask you, how asinine can the medical profession get, 3 of my childern wer in the service and my mother is still alive. I have a deadly fear of the AMA, at the time I had my operation the worst thing they (the AMA) could give you was syphilis, now we have AIDS and flesh eating strep in the hospital. When will they intentionally try to give me next once I have "blown the wistle". I want the Board to know we have 5 major hospitals and we have been denied medical help by all. University of Alabama in Birmingham (UAB) Dr. Vasconiz (left us in a room locked up and went home. Medical Center East, (MCE) Dr. Nickell, demanded mamogram that he knew was unnessary to futher rupture the implants. Carraway , Dr. Howe, made us wait all afternoon , then told us that "silicone was man's most wonderful invention" and it was no worse than an infected splinter under a finger. My son told him that our neigbor almost lost his hand to a splinter of "presure treated" pine. Howe said that he would refuse any directive involving silicone, "they (AMA) have to have it", Baptist Medical Center (BMC), Thweat still incenuate that I have syphilis. And last Brookwood, Dr. Robinson the P.S. that watched Rachel Welch get her boobs and "needed the experence" and helped them cover this "SILICONE POISONING" and thought up this operation to make damm sure anyone complaining of problems has a massive rupture afthe her surgery. One of our neighbors agreed to have cancer when her implants ruptured (Blue Cross pays for cancer) not only did the remove the implant , but they stuued in another saline implant which had as much silicone as the gel.

We intend to go back to Congress in the near future and bring these facts to their attention. They sent us home last year, saying that they were sure that Judge Pointer would handle the case properly, we told them that it was only given to Pointer to coverup. After all Federal Judges are noted as liars, cheats and thieves, see

Coughliv vs. State, 442 So.2d. 104, West Publishing Co. does not have sovern immunity and does not print intentional lies.

IN CONCLUSION, we think it only fair since Dow and the AMA used us as "expermental subjects", just like the Nazi's in Germany did, amnd wilfully, intentionally, and maliciously destroyed both our health and lives, of us and our families, that they (Dow and the AMA) be made to pay. We think that the American People need to know what Dow and the AMA really did.

/s/ Bettye L. Coughlin
/s/ Harry J. Coughlin, Jr.

P.S. We contacted you (Dow) and your legal department, your answer was send us a lawyer. You are responsible for the proceedure that was developed. *WILL THIS DO?*
/i/ BLC

V.D. REACTOR CONTROL CARD

Name: Coughlin, Betty
Address: 1616 Mann Dr
City Forestdale

Age Date:	43 Race W Dils Physician or Clinic	Sex F Disposition	Date
10-9-71	8 Dr. Upchurch/ Montclair / Bapt. Med.	0	11-23-71
4-20-73	2 Dr. A.W.Keith/ Longveiw Hospital	0	5-4-73
5-21-73	8 Univer. Hosp.	0	6-6-73
4-22-77	4 Graysville Med. Group Dr. W.A.Keith Graysville Ala.	not iniciated	4-22-77

BAPTIST MEDICAL CENTERS
BIRMINGHAM, ALABAMA
DISCHARGE SUMMARY
Coughlin, Betty

Physician: Dr. Gordon Robinson by
Dr. Robert Tarpy

patient was admitted on 11/10/71 with diagnosis of fibroedeomasta of the breasts hyperplassia of both breasts. On 11/11/71, the patient had removal of two benign fibroedenosta from the left breast along with an augmentation momoplasty. The patient well postoperatively. Admission lab and x-ray within normal limits. On 11/13/71, patient discharged to postoperative care of Dr. Gordon Robinson.

Transcribed 11/16/71

[The next was hand writen sometime after 11/16/71]

VDRL reported Od postive 1:4 Dils. This report obtained after release of patient, She will be seen in the office 11-19-71 to be advised of this and counseled as to treatment /s/ Merck

/s/Merck M.D.

APPENDIX G

IN THE STATE OF ALABAMA
JEFFERSON COUNTY, BIRMINGHAM
CIRCUIT COURT, CIVIL DIVISION

BETTYE L. COUGHLIN,
Plaintiff

vs. Case No. CV9405730

BMC, et al.,
Defendants

Comes now Plaintiff and add the following Defendants to the above styled case.

County Health Officer
Dr. Crole W. Samuelson
(address)
Dr. George Pitts M.D.

(address)

Plaintiff serves a copy of the above suit and demands a ARCP rule 36 admission as to the VD Reaction Card exibit C of the suit. Plaintiff also demands all other records hard and electrionic that the Defendants have caused to have published in any form among the parties to this suit.

Done this the 23rd day of Sept., 1994.

/s/Bettye L. Coughlin
(address)

APPENDIX H

Next is Four Green Cards, Certified Mail
Return Reciept Requested

Michael C. Buchanan, M.D.
Barara H. Merck
Dr. George Pitts, M..D. (State Health Officer)
Dr. Corole W. Samuelson (Jefferson County Health Officer)

APPENDIX I

UNIVERSITY OF ALABAMA HOSPITALS AND CLINICS

2400 0838

LAB RESULTS

TEST ROOM# 04/27/93

33924 LAST SHEET OF PATIENT RECORD
(insert)

Betty Coughlin E310716
FTA-Abs from 4/30/73
was NEGATIVE.

Result looked up 9/30/77 by
Lynn W. Head MT (ASPP)
Immunology Clinical Labs

APPENDIX J

Letter From Appeal to Pitts. , Pennsyvania Blue

Shield to Blue Cross Blue Shield of Alabama
(copy on page 16a)

APPENDIX K

O. Gordon Robinson, Jr., M.D., P.C. Aestheric ans Plastic Surgery

December 3, 1992
Blue Cross Blue Shield
450 Riverchase Parkway East
B'ham, AL 35298

RE: Bettye Coughlin
Contract #XAA427427968

Dear Sirs,

This lady had an augmentation mamaplasty in 1971. Following this she had a mulitude of problems including hair loss, hypotension, anxiety, irritable bowel sydrome, postive VDRL, skin rash, ect.

She presently probably has bilateral ruptured prostheses and is conserned that there is a causes-effect relationship. She has been told by a dermatilogist that her skin rash is due to the silicone.

Sincerely,

/s/ O. Gordon Robinson, Jr., M.D.

OGR/dc

APPENDIX L

PREADMISSION CERTIFICATION FORM
from Robinson to Blue Cross Blue Shield of Alabama

APPENDIX M

NOV-09-1992 11:19 PLASTIC SURGERY CENTER 205 838 3068 P.05

Bettye L. Coughlin 11/5/92

R.REX PAYNE, M.D., P.A.

(address)

℞ Dx Lichen Planus very severe

Edilogy probably from ruptured silicone implant
tv 1)Cortisone
2) Removal of implants as soon as possible

/s/ Payne

APPENDIX N

(records fron Carraway discovered on 7/18/95)

Betty Coughlin #4761 5-15-92

Shows that Plaintiff was illegally assulted by Culman Circuit Judge Jack Riley and the implants were, once more, ruptured.

/s/Anthony P. Clulls, M.D.
Trans: 5-18-92/ja

APPENDIX O

(Carraway records 7/18/95)

ALLERGIC TO Pen

Coughlin, Mrs Bettye Date 12/14/82

ase o. 82-1490

....

Hx of ?AIDS => generalised skin fungunal infection, IRx'd c Ntruzole.

/s/ Dr. Robert Whitten

APPENDIX P

(excerpts from transcript)

ABC NEWS NIGHTLINE #3714 Air Date August 17, 1995

The Breast Implants Safty
Controversy

Interview between Ted Koppel and Dr. David Kessler (FDA)

.....

Dr. DAVID KESSLER: But even more importantly, what do you tell the one million patients, one million women who have this devise, who are sitting there asking, "Is this devise safe?"

TED KOPPEL: There are--and I think we need to do this right up at the top here--there are two different issues that we're talking about. The one is connective tissue disease and the other is sometimes these things leak.

Dr. DAVID KESSLER: Fall apart.

TED KOPPEL: Fall apart. When they fall apart in the body, in other words, no one is suggesting that it's not bad for you if these things fall apart in the body.

Dr. DAVID KESSLER: They have to be taken out and replaced.

TED KOPPEL: Exactly. And if you leave it in there, it can be painful. Can that cause disease in and of itself, that silicone, that gets into the bloodstream, what happens?

Dr. DAVID KESSLER: It certainly can cause local symptoms. It can cause pain, it can cause nodules. No one wants a foreign substance leaking throughout one's body.

TED KOPPEL: Now, Dow Corning kept saying, "Yes, it happens, but it only happens in very, very few cases, couple of percent."

Dr. DAVID KESSLER: In 1991, the company said that the rupture rate was between 0.2 and 1.0 percent.

TED KOPPEL: What do your own findings show?

Dr. DAVID KESSLER: The published studies to date--and they're not great--suggest that the rupture rate and bleed rate is somewhere between 5 percent and 71 percent. There are published studies that show---

.....

APPENDIX Q

AS-IS

American Silicone Implant Survivors, Inc.

(address)

NEWSLETTER

VOLUME VI &VII, OCTOBER 22, 1993

....

MAMMOGRAPHY Other than surgical verification there is no sure fire way to detect a ruptured implant. The following are a few.....

Our experence and the reported experence of many others is that preoperative history, exams and xeromammograms do not adequately correlate with the presence or absense of tears and ruptures and free gel and that it is impossible to predict rupture

with certitude. **Once you deliberately incise a capsule that contains free gel, it is technically more difficult during the rest of the case to contain this and prevent silicone gel contamination of the new dissection pocket-the problem you're operating to get rid of in the first place.**

.....The problem is that this dissection is tedious and must be done centimeter by centimeter and changes a 15 to 30 minute operation to incise the capsule and pull the implant out into an operation that frequently takes 3 to 4 hours.

APPENDIX R

IN THE CIRCUIT COURT OF JEFFERSON COUNTY ALABAMA

Filed Sep 12 1994

Bettye L. Coughlin
Plaintiff

vs. Civil Action No. CV 94-5730

Medical Center East;
ET AL
Defendant

MOTION TO DISMISS

OVERRULED

30 days to answer
/s/ Jackson
Date 9-21-94

APPENDIX S

Filed September 21, 1996

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

BETTYE L. COUGHLIN,)
Plaintiff,)

vs.	)	Civil Action No.
Blue Crossand Blue Shield	)	CV-94-C-2310-S
of Alabama, Pennsylvania	)	
Blue Shield, et al.,	)	
Defendants.	)	

CERTIFICATE OF REMOVAL

I herby certify that on the 21st day of September, 1994, Blue Cross and Blue Shield of Alabama and Pennsylvania Blue Shield gave writen notice to plaintiff and all parties listed in plaintiff's Complaint of the filing, on the 21st day of September, 1994, in this Court of the Notice of Removal in the above-styled action, that a true and correct copy of the Notice of Removal was filed with the Clerk of Circuit Court for Jefferson County, Alabama, on the 21st day of September, 1994.

/s/ Kimberly R. West

APPENDIX T

Certificate Of Service Of Plaintiff

I, Harry J. Coughin, Jr. , son of Plaintiff hereby certify that we did serve a copy of the summons and complaint on Blue Cross Blue Shield of Alabama by hand delivering same to the guards station at 450 Riverchase Parkway East on August 11, 1994.

/s/ Harry J. Coughlin, Jr.

/s/ Bettye l. Coughlin

APPENDIX U

SM 94 007686 00

JUDGE JOHN H. ALSBROOKS

ALABAMA JUDICAL DATA CENTER

CASE ACTION SUMMARY

SMALL CLAINS

IN THE DISTRICT CIVIL COURT OF JEFFERSON COUNTY

ALABAMA PSYCHIATRIC SERVICES PC VS COUGHLIN

Bettye L.

9-30-94 Dismissed at Plaintiffs Cost

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 94-7099
Non-Arguement Calendar

Filed APR-5-1996
D.C. Docket No. 94-H-2310-S

BETTYE L. Coughlin,
Plaintiff-Appellant
versus
Baptist Medical Center Prinction and its agents Rayford Thweat and Michael C. Buchanan, Rayford Thweat,
Defendant-Appellees,
Michael C. Buchanan,
Defendant,
Jefferson County Health, et al.
Defendants- Appellees.

Appeal from the United States District Court for the Northern District of Alabama

---

(April 5, 1996)

Before KRAVITCH, CARNES, and BARKETT, Circuit Judges.

PER CURIAM:
AFFIRMED. See 11th Cir. R. 36-1

"Cost taxed aginst plaintiff-appellant"

Judgement Entered: April 5, 1996

For the Court: Miguel J. Cortez, Clerk
By: /s/Matt Davidson(Deputy Clerk)
Issued as Mandate: 5/31/96

' 11th Cir. R. 36-1 provides:

When the court determines that any of the following circumstances exist:

(a) judgment of the district court is based on findings of fact that are not clearly erroneous;
(b) the evidence in support of a jury verdict is sufficient;
(c) the order of an administrative agency is supported by substantial evidence on the record as a whole;
(d) summary judgment, directed verdict, or judgment on the pleadings is supported by the record;
(e) judgment has been entered without a reversible error of law;

and an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion.

Supreme Court, U.S.
FILED
OCT 23 1996
CLERK

(2)

No. 96-443

In The

Supreme Court of the United States

October Term, 1996

BETTYE L. COUGHLIN,

Petitioner,

vs.

DR. ROBERT E. HOWE; DR. WILLIAM B. NICKELL; SIMON-WILLIAMSON CLINIC, P.C.; et al.,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

12-PP

QUESTION PRESENTED

WHETHER THE ELEVENTH CIRCUIT COURT OF APPEALS PROPERLY GRANTED THESE RESPONDENTS' MOTIONS TO DISMISS BASED ON THE PETITIONER'S FAILURE TO STATE A CLAIM AGAINST THESE RESPONDENTS UPON WHICH RELIEF COULD BE GRANTED.

LIST OF PARTIES

The Petitioner is Bettye L. Coughlin. The Respondents are Baptist Medical Center Princeton, Rayford Thweat, Michael C. Buchanan, Jefferson County Health Department, Blue Cross/Blue Shield of Alabama, Blue Cross/Blue Shield of Pennsylvania, University of Alabama in Birmingham, Luis O. Vasconez, Brookwood Medical Center, Dr. Gordon Robinson, Jr., Dr. James C. Upchurch, Dr. Jorge A. Lazarte, Alabama Psychiatric Services, Dr. William B. Nickell, Carraway Medical Center, Dr. Robert E. Howe, Dr. A. W. Keith, Simon-Williamson Clinic, P.C. and Medical Center East.

This brief opposing the Petition for Writ of Certiorari is filed on behalf of Dr. Robert E. Howe, Dr. William B. Nickell and Simon-Williamson Clinic, P.C.

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STATEMENT OF THE CASE

Petitioner brought this action against numerous medical providers on August 11, 1994 in the Circuit Court of Jefferson County, Alabama. In her Complaint, Petitioner stated that she is suing Respondents William B. Nickell, M.D., Robert E. Howe, M.D., and Simon-Williamson Clinic, P.C., for libel, slander, and conspiracy to deny treatment. In the narrative portion of her Complaint, Petitioner did not allude to any of these three Respondents by name, and there is no further indication of the precise nature of her alleged claims against these three Respondents. Respondents Dr. Robert Howe, Dr. William Nickell, and the Simon-Williamson Clinic, P.C., filed a Motion to Dismiss in state court.

On September 21, 1994, defendant Blue Cross/Blue Shield of Alabama filed a Petition for Removal from Jefferson County Circuit Court to the United States District Court for the Northern District of Alabama, Southern Division. On October 12, 1994, the Petitioner filed an objection to removal of the action to federal court. Judge Hancock treated this pleading as a Motion to Remand, and denied the motion in his Order of November 4, 1994. Judge Hancock considered the Motions to Dismiss filed earlier in state court, and on November 4, 1994, Judge Hancock entered an Order dismissing the claims made against Respondents Nickell, Howe, and the Simon-Williamson Clinic, P.C., among others. Judge Hancock expressly found in his order that these three Respondents were due to have the claims against them dismissed based on the fact that the Petitioner had failed to state a claim against them upon which relief could be granted. The court noted that the Petitioner failed to make any

definitive allegation against Respondent Simon-Williamson Clinic, P.C.

Judge Hancock also stated in his order that the only claim against Dr. Howe was that he "made (plaintiff and her son) wait all afternoon" and that Carraway and Howe told her that "silicone was man's most wonderful inventions [sic]". The court was satisfied that such an allegation was not sufficient to state a valid claim against Dr. Howe and that the claims against him should be dismissed.

Judge Hancock also noted that Petitioner alleged that Dr. Nickell demanded an unnecessary mammogram from her. He wrote that this was the only claim against Dr. Nickell and that it was apparently an attempt to bring a medical malpractice claim against Dr. Nickell. Judge Hancock held that a mammogram is a preventative measure and that the recommendation and performance of such an examination, as a matter of law, does not constitute medical malpractice.

On November 14, 1994, the Petitioner filed a Notice of Appeal from the Judge's entry of the Order. On April 5, 1996, the Judge's Order was affirmed without opinion by the Eleventh Circuit Court of Appeals.

The Petitioner's claims in this case apparently stem from medical treatment she received in 1971. According to the pleadings she has submitted, Petitioner had cysts removed from her breasts at Baptist Medical Center Princeton. After the surgery, plastic surgeon Dr. Gordon Robinson inserted breast implants, which Petitioner claims she did not want. Petitioner claims in her complaint that the implants were ruptured at the time of

surgery, and that both the surgeon and the hospital were aware of this fact. Petitioner claims that she is suffering from the effects of silicone poisoning.

Petitioner also claims that Dr. Upchurch and Dr. Robinson falsely reported to the Jefferson County Health Department in November, 1971 that she had syphilis, when she did not. In her complaint, Petitioner asserts that she is suing Respondents Nickell, Howe, and Simon-Williamson Clinic, P.C., for libel, slander and conspiracy to deny treatment, but she does not include facts describing any incidents which she contends constituted libel, slander or conspiracy. On its face, her complaint failed to state any claim against any of these three Respondents.

REASONS FOR DENYING PETITION

1. Petitioner's statement of the case set forth in her Petition fails to mention Respondents Howe, Nickell, and Simon-Williamson Clinic, P.C. Thus, these Respondents take the position that Ms. Coughlin is not asking for a review of the dismissal of the case against these defendants and the Eleventh Circuit's affirmance of the same. At no point in her Petition does she say that she did in fact state a claim against any or all of these three Respondents, nor does she describe facts which could possibly lead to the conclusion that she has a valid claim against any of these Respondents. Furthermore, Petitioner's petition contains misstatements, however, because these misstatements do not relate to these three Respondents, they will not be addressed in this brief.

2. No compelling reason exists for granting this petition. Supreme Court Rule 10 sets forth the types of

reasons that would justify a grant for a Petition for Writ of Certiorari. These include a scenario in which the courts of appeals have entered conflicting decisions, a state court of last resort has decided an important federal question in a way that conflicts with decisions of other courts of last resort, or a court has decided an important question of federal law that should be settled by this Court.

None of these reasons are present in the instant case. No claims were stated against these Respondents in the Petitioner's Complaint, and that was the basis for the court's order dismissing these claims. It was also the basis for the Eleventh Circuit's affirmance of that dismissal. At no time were any federal questions presented, nor does the decision of the Eleventh Circuit Court of Appeals conflict with any other decisions of other appellate courts. Therefore, based on jurisdictional and procedural grounds, this Court should not consider the claims of the Petitioner.

3. None of the reasons for granting the Petition as listed by Petitioner would serve as a proper basis for review by this Court. Each of the reasons proffered by Ms. Coughlin will be addressed separately:

> (a) Petitioner claims that the decisions of the Court of Appeals are in direct conflict with all laws and rules. However, it is well-settled in all jurisdictions that a plaintiff is not allowed to proceed on a claim if she has in fact failed to state a claim against a defendant. A complaint may be dismissed when it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41,

45-46 (1957). A dismissal can be based on the lack of cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 533-34 (9th Cir. 1984). The court may dismiss a complaint when no construction of the factual allegations contained therein would support a cause of action. *Marshall County Bd. of Education v. Marshall County Gas Dist.*, 992 F.2d 1171, 1174 (11th Cir. 1993).

(b) As her second reason, Petitioner claims that the District Judges in Atlanta are out of control and willing to go to any length to cover their involvement in the experiment. The Petitioner's argument about the existence of an "experiment" has not been made before. Petitioner also fails to adequately define the "experiment".

(c) Petitioner's next argument is that the district court in Atlanta denied her meaningful discovery. Because the claims against Respondents Howe, Nickell, and Simon-Williamson Clinic, P.C., were dismissed on a 12(b)(6) Motion, discovery was not required. The lower court's decision was based on the fact that Ms. Coughlin's Complaint itself failed to state a claim against any of these Respondents, regardless of what discovery might reveal later.

(d) Petitioner states as her fourth reason that ERISA is not a shield to commit murder. In this case, no one has been murdered, and Petitioner herself is alive.

(e) Petitioner then argues that agents of the Health Department are not immune from suit for knowingly doing wrongful acts. None of these Respondents on behalf of whom this opposition is filed are agents or employees of

the Health Department. Therefore, this argument does not apply to these Respondents.

(f) Finally, Petitioner claims that UAB is the same as the Health Department and that respondeat superior takes the blame. In this section, Petitioner has failed to articulate a meaningful reason for granting her Petition for Writ of Certiorari. While it is unclear what petitioner means by this argument, *it is clear* that she is not challenging a decision involving an important federal or constitutional issue.

CONCLUSION

The Petition for Writ of Certiorari should be denied because the case was properly decided based on well-settled pleading requirements. The Petitioner's objections to the district court's dismissal of the claims against these Respondents and the Eleventh Circuit's affirmance of that decision, does not raise a federal question appropriate for review by this Court. No federal question was raised or decided in the courts below as to these three Respondents. Accordingly, Respondents Dr. Robert E. Howe, Dr. William B. Nickell, and Simon-Williamson Clinic, P.C.,

respectfully request that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

W. STANCIL STARNES
(Counsel of Record)
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